Supreme Court, U.S.
FILED
MAR 6 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-325

In the Supreme Court of the United States

OCTOBER TERM, 1988

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
PETITIONERS

v.

MAURICE SMITH, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT, *et al.*,
RESPONDENTS

On Writ of Certiorari to the Arkansas Supreme Court

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED AUGUST 23, 1988
CERTIORARI GRANTED NOVEMBER 14, 1988

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SUPREME COURT OF ARKANSAS

No. 85-101

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
APPELLANTS

v.

HENRY C. GRAY, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT, *et al.*,
APPELLEES

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
	* * * *
1986	
Apr 14	[Order of Chancery Court upholding constitutionality of HUE tax] Affirmed. Holt, C.J. Hickman, J., dissents, Pyrtle, J. not participating.
	* * * *
May 27	Petition for rehearing denied. Supplemental opinion rendered. Hickman, J. would grant Pyrtle, J. not participating.
June 17	Appellants' Notice of appeal to U.S. Supreme Court. Filed.
	* * * *
Sep 15	Notice from U.S. Supreme Court of filing of appeal on 9-3-86. Filed.
	* * * *

DATE	PROCEEDINGS
1987	
Jul 17	Mandate from U.S. Supreme Court. Filed.
	* * * *
Jul 20	Appellants motion to remand to Chancery Court upon receipt of mandate is denied. Hickman and Glaze, JJ., not participating.
Jul 24	Appellants' Motion for Temporary Relief. Served.
Jul 27	Appellees' [Arkansas State Highway Department] Response to Motion for Temporary Relief. Served.
Jul 27	Appellees' Response (State Treasurer) to Motion for Temporary Relief. Served.
	* * * *
Jul 27	Appellants' Reply to State Highway Department's Response to Motion for Temporary Relief. Served.
Jul 30	Appellants' Motion for Temporary Relief is Denied. Order #1.3-5 (Glaze, J., not participating).
Jul 30	Copy of Application for Injunction is Filed with U.S. Supreme Court. Filed.
	* * * *
Aug 4	Appellants' Motion for Leave to file a brief on behalf of Appellants. Served.
	* * * *
Aug 14	Motion to file brief on behalf of Appellants is granted.
Aug 20	U.S. Supreme Court opinion granting application for writ of injunction. Filed.
	* * * *

DATE	PROCEEDINGS
1988	
Jan 27	Motion of [Owner-Operators Independent Drivers Association] to intervene and for certification of subclass. Served.
	* * * *
Feb 8	Response to above motion. Served.
Feb 16	Motion of Owner-Operators Independent Drivers Assoc., Inc. to intervene and for certification of a subclass is denied. (Pyrtle, J., not participating).
	* * * *
Mar 7	Submitted and argued.
	* * * *
Mar 14	Reversed and Remanded. Newbern, J., Hickman, J., dissents in part.
	* * * *
Mar 31	Appellants' (ATA, et al.) Petition for Rehearing. Served.
	* * * *
Apr 11	State Highway response to petition for rehearing. Served.
Apr 25	Petition for rehearing is denied. Hickman, J., would grant.
	* * * *
Aug 30	Notice of filing Petition for Certiorari in U.S. Supreme Court on 8-23-88.
Nov 16	Notice from U.S. Supreme Court of order granting Petition for Writ of Ceritorari. Filed.

IN THE CHANCERY COURT
OF PULASKI COUNTY, ARKANSAS
FOURTH DIVISION

No. 83-2360

AMERICAN TRUCKING ASSOCIATIONS, INC., TRANSCON LINES, INC., DIAMOND TRANSPORTATION SYSTEM, INC., ROLLINS LEASING CORPORATION, AND COMMERCIAL CARRIERS ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED TAXPAYERS; AND ARKANSAS BUS AND TRUCK ASSOCIATION, INC., AND JONES TRUCK LINES, INC., ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED TAXPAYERS, PLAINTIFFS

vs.

HENRY C. GRAY, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT; DAVID SOLOMAN; RON HERROD; PATSY LEE THOMASSON; RAYMOND PRITCHETT, JR.; AND BOBBY HOPPER; MEMBERS OF THE ARKANSAS STATE HIGHWAY COMMISSION; ROY L. JOHNSON, CHIEF OF THE ARKANSAS HIGHWAY POLICE DIVISION OF THE ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT; CHARLES D. RAGLAND, COMMISSIONER OF REVENUES, REVENUE DIVISION, ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION; JIMMY LOU FISHER, TREASURER OF THE STATE OF ARKANSAS; MAHLON MARTIN, DIRECTOR, ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION, DEFENDANTS

ORDER DENYING PRELIMINARY INJUNCTION

Now on this 29th day of July, 1983, comes on to be heard the above styled case with Plaintiffs requesting the Court to grant a Preliminary Injunction. From the testimony of the witnesses, briefs, and arguments of coun-

sel the Court denies Plaintiffs' Motion for Preliminary Injunction and dissolves the Order of June 1, 1983.

It is therefore ordered that Plaintiffs' Motion for Preliminary Injunction is denied unless Plaintiffs post bond or other surety in the amount of $53,000,000.00.

/s/ [Illegible]
Chancellor

8-1-83
Date

APPROVED:

/s/ [Illegible]
Attorney for Plaintiff

/s/ [Illegible]
Attorney for State Highway Defendants

/s/ Frederick K. Campbell
Attorney for State Treasurer

/s/ [Illegible]
Attorney for Department of Finance
and Administration

IN THE CHANCERY COURT
OF PULASKI COUNTY, ARKANSAS
FOURTH DIVISION

No. 83-2360

AMERICAN TRUCKING ASSOCIATIONS, INC., TRANSCON LINES, INC., DIAMOND TRANSPORTATION SYSTEM, INC., ROLLINS LEASING CORPORATION, COMMERCIAL CARRIERS, INC., AND JOE FORTENBERRY, D/B/A FERNWOOD TRANSPORTATION, ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED TAXPAYERS; AND ARKANSAS BUS AND TRUCK ASSOCIATION, INC., AND JONES TRUCK LINES, INC., AND LEON CAWOOD, D/B/A LEON CAWOOD TRUCKING, ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED TAXPAYERS, PLAINTIFFS

vs.

HENRY C. GRAY, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT; DAVID SOLOMAN; RON HERROD; PATSY LEE THOMASSON; RAYMOND PRITCHETT, JR.; AND BOBBY HOPPER; MEMBERS OF THE ARKANSAS STATE HIGHWAY COMMISSION; ROY L. JOHNSON, CHIEF OF THE ARKANSAS HIGHWAY POLICE DIVISION OF THE ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT; CHARLES D. RAGLAND, COMMISSIONER OF REVENUES, REVENUE DIVISION, ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION; JIMMIE LOU FISHER, TREASURER OF THE STATE OF ARKANSAS, MAHLON MARTIN, DIRECTOR, ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION, DEFENDANTS

SECOND AMENDED COMPLAINT

[Filed Sept. 2, 1983]

Come now the Plaintiffs, individually and as the representatives of similarly situated classes of taxpayers pursuant to Rule 23 of the Arkansas Rules of Civil Procedure, and for their cause of action against Henry C. Gray, Director of the Arkansas Highway and Transportation Department; David Soloman; Ron Herrod; Patsy Lee Thomasson; Raymond Pritchett, Jr.; and Bobby Hopper, Members of the Arkansas State Highway Commission; Roy L. Johnson, Chief of the Arkansas Highway Police Division of the Arkansas Highway and Transportation Department; Charles D. Ragland, Commissioner of Revenues of the State of Arkansas; Jimmie Lou Fisher, Treasurer of the State of Arkansas and Mahlon Martin, Director of the Arkansas Department of Finance and Administration, Defendants, and do allege and state as follows:

PLAINTIFFS

1. Plaintiff American Trucking Associations, Inc. ("ATA") is a national non-profit corporation organized and operating under the non-profit corporation laws of the District of Columbia, and with its principal place of business located there. ATA is a federation of 51 trucking associations, of all states and the District of Columbia, and 13 national conferences. It represents every type and geographical scope of motor carrier operation in the United States, including over 10,000 interstate for hire carriers, and tens of thousands of private and local carriers, many of whose motor carrier vehicles are qualified for operation within the State of Arkansas and are subject to the requirements of Act 685 of 1983.

2. Plaintiff Transcon Lines, Inc. ("Transcon") is a corporation organized and existing under the laws of the State of California with its principal place of business located in El Segundo, California. Transcon is also registered and qualified to do, and is doing, business in the State of Arkansas as an interstate motor carrier as defined in the Interstate Commerce Act, operating under Certificates of Convenience and Necessity issued by the Interstate Commerce Commission. At present, all of Transcon's inter-city motor carrier vehicles are qualified

for operation within the State of Arkansas (and all 47 of the other contiguous states of the United States) and are subject to the provisions of Act 685 of 1983.

3. Plaintiff Diamond Transportation Systems, Inc. ("Diamond") is a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business located in Racine, Wisconsin. Diamond's vehicles travel to, from and through Arkansas, though it maintains no offices or agents in Arkansas and is not qualified to conduct business in Arkansas as a foreign corporation, since its business activities are conducted strictly in interstate commerce. Diamond is an interstate motor carrier as defined in the Interstate Commerce Act, operating under Certificates of Convenience and Necessity issued by the Interstate Commerce Commission. At present, all of Diamond's motor carrier vehicles are qualified for operation within the State of Arkansas (and all 47 of the other contiguous states of the United States) and nearly all are subject to the provisions of Act 685 of 1983.

4. Plaintiff Rollins Leasing Corporation ("Rollins") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in Wilmington, Delaware. Rollins' principal business is the full-service leasing of commercial motor vehicles to fleet operators from 125 branch offices located in 28 states. Rollins is the owner of approximately 8,100 leased motor carrier vehicles utilized by private carriers engaged in Interstate Commerce. These motor carrier vehicles are grouped into approximately 1,500 leased fleets and approximately 250 short-term rental fleets. At the present, a large number of the motor carrier vehicles owned by Rollins are subject to the provisions of Act 685 of 1983.

5. Plaintiff Commercial Carriers, Inc. ("Commercial") is a corporation organized and existing under the laws

of the State of Michigan with its principal place of business located in Southfield, Michigan. Commercial's principal business is the delivery of new and used motor vehicles to automobile dealers throughout the United States. Commercial is an interstate motor carrier as defined in the Interstate Commerce Act, and operates under Certificates of Convenience and Necessity issued by the Interstate Commerce Commission. Commercial is not registered to do business in the State of Arkansas, since all of its business activities are conducted strictly in the furtherance of interstate commerce. At present, all of Commercial's motor carrier vehicles are qualified for operation within the State of Arkansas (and all 47 of the other contiguous states of the United States) and are subject to the provisions of Act 685 of 1983.

6. Plaintiff Joe Fortenberry ("Fortenberry") is an individual, is a resident of the State of Mississippi, and operates an interstate trucking business as Joe Fortenberry, d/b/a Fernwood Transportation with his principal place of business located at Fernwood, Mississippi. Fortenberry's principal business is the transport of forest products throughout the states of the United States that lie east of the Rocky Mountains. Fotenberry is an interstate motor carrier as defined in the Interstate Commerce Act, and he operates under Certificates of Convenience and Necessity issued by the Interstate Commerce Commission. At the present, Fortenberry's trucks are qualified for operation within the State of Arkansas and are subject to the provisions of Act 685 of 1983.

7. Plaintiff Arkansas Bus and Truck Association, Inc. ("ABTA") is a non-profit corporation organized and exisitng under the laws of the State of Arkansas with its principal place of business at Little Rock, Arkansas. ABTA is a federation composed of 224 motor carriers and bus lines, of which approximately 135 motor carriers engaged in interstate commerce, whose motor carrier

vehicles are registered and based in the State of Arkansas.

8. Plaintiff Jones Truck Lines, Inc. ("JTL") is a corporation organized and existing under the laws of the State of Arkansas with its principal place of business located in Springdale, Arkansas. JTL is qualified to do, and is doing, business in the State of Arkansas as an interstate motor carrier as defined in the Interstate Commerce Act, operating under Certificates of Convenience and Necessity issued by the Interstate Commerce Commission. At present, all of JTL's intercity motor carrier vehicles are qualified for operation within the State of Arkansas (and at least 14 of the other states of the United States, including the states of Georgia, Oklahoma and Nebraska) and are subject to the provisions of Act 685 of 1983.

9. Plaintiff Leon Cawood ("Cawood") is an individual, is a resident of the State of Arkansas, and operates an interstate trucking business as Leon Cawood, d/b/a Leon Cawood Trucking with his principal place of business located at Springdale, Arkansas. Cawood's principal business is the transport of exempt commodities throughout the United States. At the present, Cawood's trucks are qualified for operation within the State of Arkansas and are subject to the provisions of Act 685 of 1983.

DEFENDANTS

10. Defendant Henry C. Gray is the duly appointed and acting Director of the Arkansas State Highway and Transportation Department and a resident of Pulaski County, Arkansas.

11. Defendants David Soloman, Ron Herrod, Patsy Lee Thomasson, Raymond Pritchett, Jr. and Bobby Hooper constitute the entire membership of the Arkansas State Highway Commission. Defendant Soloman is a

resident of Phillips County, Arkansas. Defendant Herrod is a resident of Nevada County, Arkansas. Defendant Thomasson is a resident of Cleveland County, Arkansas. Defendant Pritchett is a resident of Pulaski County, Arkansas. Defendant Hooper is a resident of Washington County, Arkansas. The Arkansas Highway Commission and the Arkansas Highway and Transportation Department are an independent commission and an independent department established by Amendment 42 to the Arkansas Constitution. The Commission and its members are charged with the responsibility for enforcing laws of Arkansas related to the Highway system of this state, including the provisions of Act 685 of 1983. Defendant Roy L. Johnson is the Chief of the Arkansas Highway Police Division of the Arkansas Highway and Transportation Department. Defendant Johnson is a resident of Pulaski, County, Arkansas.

12. Defendant Charles D. Ragland is the duly appointed and acting Commissioner of Revenues of the State of Arkansas and a resident of Pulaski County, Arkansas.

13. Defendant Jimmie Lou Fisher is the duly elected and acting Treasurer of the State of Arkansas and the chief financial officer of this State. Defendant Fisher is a resident of Pulaski, County, Arkansas.

14. Defendant Mahlon Martin is the duly appointed and acting Director of the Arkansas Department of Finance and Administration and a resident of Pulaski County, Arkansas.

15. In their respective capacities, the Defendants named in paragraphs 6 through 11, above, are the individuals empowered by law to administer and enforce the provisions of Act 685 of 1983, which Act is herein challenged. Each of the above Defendants is a citizen and resident of the State of Arkansas.

CLASS ACTION

16. Plaintiffs bring this action on behalf of themselves and, pursuant to Rule 23 of the Arkansas Rules of Civil Procedure, all other taxpayers who are similarly situated, to test the legality and constitutionality of the various provisions of Act 685 of 1983 and to protect the affected classes of taxpayers against the enforcement of illegal exactions. The affected taxpayers form (1) a class of in excess of 10,000 intercity motor carriers that are similarly situated and (2) all Arkansas based intercity motor carriers that are similarly situated. These two (2) classes of Plaintiffs are so large that it is impractical to bring them all before this Court within a reasonable time. The certification of this action as a class action will avoid a multiplicity of possibly conflicting adjudications on the same issue. There are questions of law and fact presented herein which are common to the entire group of both classes of taxpayers. The claims of the Plaintiffs herein are typical of the claims of the above-described classes. Plaintiffs will fairly and adequately protect the interest of both classes and will prosecute this action for the benefit of all members of both classes.

CAUSES OF ACTION

17. This is an action to have declared as an illegal exaction, under Article 16 Section 13 of the Constitution of the State of Arkansas, the collection from Plaintiffs and all other similarly situated taxpayers of the "Arkansas Highway Use Equalization Tax" imposed by various provisions of Act 685 of 1983; to order an accounting of taxes collected from Plaintiffs and all similarly situated taxpayers of the amount of the illegally exacted tax that has been collected to date, and to place all subsequently collected monies under the provisions of Act 685 of 1983 in a special interest bearing account outside of the General Fund or designated Special Revenue Funds of the State pending the outcome of this proceeding, and to

order the refund of these illegally exacted amounts, plus interest, to each member of the class. Plaintiffs also seek to have declared unconstitutional under both the United States and Arkansas Constitutions the various provisions of the Act 685 of 1983 for the reasons below set forth. This Court's jurisdiction is founded upon Article 16 Section 13 of the Constitution of the State of Arkansas.

18. Alternately, the Court has jurisdiction of this action under 42 U.S.C. § 1983 in that Act 685 of 1983 deprives plaintiffs of rights, privileges, and immunities secured by the Constitution and laws of the United States of America.

19. Alternatively, the Court has jurisdiction of this action under the provisions of Ark. Stat. Ann. § 34-2501 and Rule 57 of the Arkansas Rules of Civil Procedure, inasmuch as the implementation of Act 685 of 1983, as currently proposed by the Defendants, will illegally deprive the Plaintiffs and all similarly situated taxpayers of monies which they will not owe to the State of Arkansas, and thus a real case and controversy exists for determination of the parties' rights pursuant to a declaratory judgment.

20. On March 23, 1983 the Honorable Bill Clinton, Governor of Arkansas, approved Senate Bill 220 as passed by the 74th General Assembly of the State of Arkansas, said Senate Bill 220 then becoming Act 685 of 1983, the provisions of which are to become effective on and after July 1, 1983. (A copy of Act 685 of 1983 is attached as Exhibit A to the original Complaint.) Plaintiffs and other taxpayers similarly situated became subject to "emergency" Regulations (on or about April 20, 1983) and "final" Regulations (on or about July 8, 1983) issued by the Arkansas State Highway and Transportation Department, promulgated for the purpose of implementing the provisions of Act 685 of 1983. The Plaintiffs and all other similarly situated citizen taxpayers became sub-

ject to "emergency" Regulations (on or about April 14, 1983) and "final" Regulations (on or about July 31, 1983) promulgated by the Department of Finance and Administration and the Commissioner of Revenues of the State of Arkansas, implementing the various provisions of Act 685 of 1983. The two sets of "emergency" and "final" Regulations interpreting Act 685 of 1983 are different in subtle, but particularly important ways with respect to incidents of taxation. Copies of the "emergency" Regulations, which were the subject of a public comment hearing on May 26, 1983, are attached to the original Complaint as Exhibits B and C, respectively. The "final" Regulations of the Arkansas State Highway and Transportation Department were introduced into evidence in this case as Plaintiffs' Exhibit 5.

COUNT I

21. The non-Arkansas based Plaintiffs, on behalf of themselves and all other similarly situated taxpayers, contend, and in this action seek to prove, that Act 685 of 1983 and the "emergency" and "final" Rules and Regulations promulgated to implement the same do, both facially and actually:

(a) burden interstate commerce in violation of the Commerce Clause of the U.S. Constitution, Article 1, Section 8, because;

1. the activities of the Plaintiffs and the similarly situated class of taxpayers in the State of Arkansas do not have a sufficient nexus with the State to subject all of the vehicles operated by such taxpayers that are qualified in other states to carry between 71,281 and 80,000 pounds to the levy provided by Act 685 of 1983;

2. the levy imposed by Act 685 of 1983 discriminates against interstate commerce, favoring local commerce;

3. the burden of levy imposed by Act 685 of 1983 upon non-Arkansas based interstate motor carriers is not reasonably related to the extent of such carriers' contact with the State of Arkansas; and

4. the actual effect of the levy imposed by Act 685 of 1983 will result in the creation of a preferential trade area for local commerce, which will result in the multiplication of such trade areas in other states, which will result in the destruction of free commerce anticipated by the Constitution.

(b) deprive motor carriers operating non-Arkansas based motor carrier vehicles of rights and subjects them to obligations not shared by motor carriers operating motor carrier vehicles based in Arkansas, in violation of the privileges and immunities clause of the U.S. Constitution Article IV, Section 2.

(c) cause Act 685 of 1983 to be incompatible with and contrary to Federal Law and Regulations on a subject matter in which the Federal standards pre-empt and preclude inconsistent state requirements in violation of the supremacy clause of the Constitution, Article VI, Section 2.

(d) deprive motor carriers operating non-Arkansas based motor carrier vehicles of the equal protection of the laws in violation of the 14th Amendment to the U.S. Constitution, and of rights, privileges or immunities secured by the Constitution and laws of the United States in violation of 42 U.S.C. § 1983, since Act 685 of 1983, on its face, discriminates in favor of vehicles registered to carry less than 73,280 pounds and in favor of vehicles registered in Arkansas to carry unfinished and unprocessed farm products, forest products, clays, minerals and ores.

(e) constitutes a tax upon a single class of subjects within the territorial limits of the State of Arkansas,

which tax is not uniform in its impact upon motor carriers operating non-Arkansas based motor carrier vehicles and motor carriers operating motor carrier vehicles registered in Arkansas, in violation of the Uniformity provision of the Arkansas Constitution in Article 16, Section 5.

(f) represents a breach of the State of Arkansas' contractual obligations under the International Registration Plan for motor carrier vehicles, which Plan this State has previously entered into as a signatory party pursuant to the previous authorization of the General Assembly, and, thus, the prohibition on reciprocity of the levy imposed by this Act set forth in section 2(j) of Act 685 of 1983 represents an intentional breach by the State of Arkansas of its contractual obligations with its sister states which must be collaterally estopped.

(g) illegally delegates to agencies of this State powers of taxation without sufficient guidance, so that permanent regulations of both the Director and the Commissioner represent legislative acts.

COUNT II

22. The Arkansas based Plaintiffs, on behalf of themselves and all similarly situated taxpayers, contend, and in this action seek to prove:

(a) that their ability to engage in interstate commerce is unconstitutionally burdened by the prohibition against reciprocity provided by section 2(j) of Act 685 of 1983, in that such prohibition has subjected them to an additional tax in other states mirroring the levy imposed by Act 685 of 1983, which mirrored levy would not be imposed except for the provision of section 2(j) of Act 685 of 1983.

(b) That Act 685 of 1983 represents a breach of the State of Arkansas' contractual obligations under the International Registration Plan for motor carrier vehicles, which Plan this State has previously entered into as a signatory party pursuant to the previous authorization of the General Assembly, and, thus, the prohibition on reciprocity of the levy imposed by this Act set forth in section 2(j) of Act 685 of 1983 represents an intentional breach by the State of Arkansas of its contractual obligations with its sister states which must be collaterally estopped.

COUNT III

23. Plaintiffs also state that the emergency regulations promulgated by both the Arkansas Highway and Transportation Department and the Department of Finance and Administration are violative, both substantively and procedurally, of the Arkansas Administrative Procedures Act and are therefore of no force and effect as regards Plaintiffs herein.

COUNT IV

24. Plaintiffs further state that Defendants have collected, are presently collecting, and will continue to collect, Highway Use Equalization Tax monies under the provisions of Act 685 of 1983. Until a judgment becomes final in this proceeding, Plaintiffs contend that the Defendants should be preliminarily and permanently enjoined, pursuant to Rule 65 of the Arkansas Rules of Civil Procedure, from actually depositing any of these monies in the State Treasury or expending any of the Highway Use Equalization Tax monies illegally exacted under said Act 685 of 1983. All funds collected, pursuant to Act 685 of 1983 pending the outcome of this proceeding, should be held by the State Treasurer or the disbursing agents of the State (or by a third party so designated by this Court) in a special interest bearing account or accounts designated as Highway Use Equalization Tax Collections Fund. Defendants should also be enjoined from appropriating and expending any of said

funds until the judgment entered in this matter becomes final.

25. Plaintiffs contend that Defendants should be preliminarily and permanently enjoined, pursuant to Rule 65 of the Arkansas Rules of Civil Procedure, from imposing penalties and fines for the failure of members of the class from having all indicia of compliance on or with all their intercity motor vehicles, until a judgment becomes final in this proceeding. Alternatively, if such fines and penalties are imposed and collected by the Defendants, the Defendants should be enjoined from depositing these monies in the State Treasury, but should be ordered to deposit such monies to a separate (or escrow) fund, similar to the fund requested in paragraph 20, above, designated as to whom the monies were collected from so that they may be held subject to refund to the member of the class so paying these fines or penalties at such time as the judgment in this proceeding becomes final.

26. Plaintiffs' counsel should be apportioned and awarded a reasonable part of the Highway Use Equalization Tax Collection Fund held subject to refund for professional services rendered to the Plaintiffs and other members of the similarly situated class herein pursuant to the provisions of Ark. Stat. Ann. § 84-4601 and 42 U.S.C. § 1988, or as private attorneys general.

WHEREFORE, Plaintiffs pray that the Court herein enter orders and judgment finding as follows:

(1) That the Defendants be temporarily restrained from depositing funds collected pursuant to the provisions of Act 685 of 1983 into the General Treasury of the State of Arkansas, including all tax monies and any penalties or fines imposed by the Defendants, and to enjoin the Defendants from appropriating and expending any of said funds until the judgment entered in this matter becomes final.

(2) That the Court set a hearing as soon as practicable to issue a preliminary injunction to the Defendants requiring them to deposit the amounts collected pursuant to Act 685 of 1983 to a specially designated interest bearing account which will be held subject to refund to each member of the class when the judgment in this proceeding becomes final, together with interest.

(3) That the levy imposed by the Act 685 of 1983 is unconstitutional and an illegal exaction held subject to refund to the respective payor members of both classes represented by the Plaintiffs.

(4) That Plaintiffs' counsel be apportioned and awarded a reasonable part of the Highway Use Equalization Tax held subject to refund for professional services rendered to the Plaintiffs and other members of the similarly situated class pursuant to the provisions of Ark. Stat. Ann. §§ 84-4601, 42 U.S.C. § 1988 or as private attorneys general.

(5) For such other and further relief as this Court may deem just and equitable.

MITCHELL, WILLIAMS, SELIG,
JACKSON & TUCKER
1000 Savers Federal Building
Little Rock, AR 72201
(501) 376-3151

By /s/ Pat Moran
PAT MORAN

/s/ Eugene G. Sayre
EUGENE G. SAYRE

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing Second Amended Complaint this 2nd day of September, 1983, has been made on Counsel for the Defendants by hand delivering a copy thereof to Mr. Chris Parker, Arkansas Department of Highways and Transportation, 9500 New Benton Highway, Little Rock, Arkansas, Mr. Frederick Campbell, Assistant Attorney General, Justice Building, Little Rock, Arkansas 72201, and Mr. Joseph Morphew, Office of Legal Services, Arkansas Department of Finance & Administration, Room 211 Joel Ledbetter Building, 7th and Wolfe Streets, Little Rock, Arkansas 72201.

/s/ Eugene G. Sayre
EUGENE G. SAYRE

IN THE CHANCERY COURT OF PULASKI COUNTY, ARKANSAS

No. 83-2360

AMERICAN TRUCKING ASSOCIATIONS, INC., TRANSCON LINES, INC., DIAMOND TRANSPORTATION SYSTEM, INC., ROLLINS LEASING CORPORATION, AND COMMERCIAL CARRIERS, INC., ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED TAXPAYERS; AND ARKANSAS BUS AND TRUCK ASSOCIATION, INC., AND JONES TRUCK LINES, INC., ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED TAXPAYERS, PLAINTIFFS

vs.

HENRY C. GRAY, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT; DAVID SOLOMAN; RON HERROD; PATSY LEE THOMASSON; RAYMOND PRITCHETT, JR.; AND BOBBY HOPPER; MEMBERS OF THE ARKANSAS STATE HIGHWAY COMMISSION; ROY L. JOHNSON, CHIEF OF THE ARKANSAS HIGHWAY POLICE DIVISION OF THE ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT; CHARLES D. RAGLAND, COMMISSIONER OF REVENUES, REVENUE DIVISION, ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION; JIMMIE LOU FISHER, TREASURER OF THE STATE OF ARKANSAS; MAHLON MARTIN, DIRECTOR, ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION, DEFENDANTS

ORDER FOR CERTIFICATION AS CLASS ACTION

[Filed Sept. 20, 1983]

On August 5, 1983, the Court heard arguments on the Motion of the Plaintiffs herein, filed pursuant to the provisions of Rule 23 of the Arkansas Rules of Civil

Procedure, seeking an Order of this Court certifying the above-styled cause as a class action. From the matters stated in Plaintiffs' Motion and the affidavits, exhibits and testimony previously filed herein, the arguments and briefs of counsel for the parties and all other proof now before the Court, the Court hereby makes the following findings of fact:

1. Plaintiffs filed their First Amended Complaint herein on July 8, 1983, and their Second Amended Complaint on September 2, 1983, on behalf of themselves and the two (2) separate classes of all other taxpayers who are similarly situated, pursuant to Article 16, § 13 of the Arkansas Constitution, to test the legality and constitutionality of the Highway Use Equalization Tax imposed by the provisions of Act 685 of 1983 as an "illegal exaction."

2. Questions of fact and law raised by the pleadings herein are questions common to all members of either of the defined classes and predominate over any questions which may affect only individual members of either class, thus making a class action superior to other available methods for the fair and efficient adjudication of the issues in controversy herein.

3. Certifying the above-styled cause as a class action will provide a fair and efficient method for adjudication of the controversy herein in that it will enable the interpretation, validity and enforcement of Act 685 of 1983 to be determined in a single forum in which all parties with an interest in the subject matter will have an opportunity to be heard and will spare the Defendants, in tneir official capacities, from the possibility of having to defend in a multiplicity of lawsuits on the same issue.

4. Since an "illegal exaction" suit, brought pursuant to Article 16, § 13 of the Arkansas Constitution is by its very nature a "class action," the Court feels compelled to certify this action as a class action under Rule 23 of the Arkansas Rules of Civil Procedure only because the Supreme Court stated in *City of Little Rock v. Cash*, 277 Ark. 494, 510-511 (1982) that it is error for a trial court under such circumstances, not to require the Plaintiffs to comply with the provisions of Rule 23.

5. The taxpayers subject to the provisons of Act 685 of 1983 form two (2) classes so large that it is impractical to bring them all before the Court within a reasonable time and, as such, the named Plaintiffs herein are able to sue for the benefit of all members of their respective classes, which classes are hereby defined as follows:

1. All motor carriers whose motor carrier vehicles are:

(a) base registered in jurisdictions other than Arkansas; and

(b) subject to the Highway Use Equalization Tax embodied in Act 685 of 1983.

2. All motor carriers whose motor carrier vehicles are:

(a) base registered in the State of Arkansas; and

(b) subject to the Highway Use Equalization Tax embodied in Act 685 of 1983.

6. The parties hereto are specifically exempt from any requirement of giving notice in this matter, since it is an "illegal exaction" suit.

IT IS, THEREFORE, CONSIDERED, ORDERED AND DECREED by the Court that the Motion of Plaintiffs filed herein requesting certification of this action as a class action should be, and, accordingly is hereby, granted

and the above-styled cause is hereby certified as a class action pursuant to Rule 23 of the Arkansas Rules of Civil Procedure.

ENTERED this 20 day of September, 1983.

/s/ Bruce T. Bullion
BRUCE T. BULLION
Chancery Judge

APPROVED AS TO FORM:

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(501) 376-3151

By /s/ Eugene G. Sayre
EUGENE G. SAYRE

Solicitors for Plaintiffs

DEPT. OF FINANCE AND
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By /s/ Michael D. Munns
MICHAEL D. MUNNS

OFFICE OF THE ATTORNEY GENERAL
Assistant Attorney General
State of Arkansas
Justice Building
Little Rock, Arkansas 72201

By /s/ Frederick K. Campbell
FREDERICK K. CAMPBELL

ARKANSAS STATE HIGHWAY COMMISSION,
Henry C. Gray and Roy L. Johnson
P.O. Box 2261
Little Rock, Arkansas 72203

By /s/ Ted Goodloe
TED GOODLOE

Solicitors for Defendants

IN THE CHANCERY COURT
OF PULASKI COUNTY, ARKANSAS

No. 83-2360

AMERICAN TRUCKING ASSOCIATIONS, INC., TRANSCON LINES, INC., DIAMOND TRANSPORTATION SYSTEM, INC., ROLLINS LEASING CORPORATION, AND COMMERCIAL CARRIERS, INC., ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED TAXPAYERS; AND ARKANSAS BUS AND TRUCK ASSOCIATION, INC., AND JONES TRUCK LINES, INC., ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED TAXPAYERS, APPELLANTS

vs.

HENRY C. GRAY, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT; DAVID SOLOMAN; RON HERROD; PATSY LEE THOMASSON; RAYMOND PRITCHETT, JR.; AND BOBBY HOPPER; MEMBERS OF THE ARKANSAS STATE HIGHWAY COMMISSION; ROY L. JOHNSON, CHIEF OF THE ARKANSAS HIGHWAY POLICE DIVISION OF THE ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT; CHARLES D. RAGLAND, COMMISSIONER OF REVENUES, REVENUE DIVISION, ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION; JIMMIE LOU FISHER, TREASURER OF THE STATE OF ARKANSAS; MAHLON MARTIN, DIRECTOR, ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION, APPELLEES

ORDER

[Filed Oct. 11, 1984]

Now on this day comes on to be heard the above styled case with plaintiffs appearing by their attorney, Eugene Sayre, Defendant Jimmie Lou Fisher, Treasurer of State

of Arkansas appearing by her attorney, Frederick Campbell, State Revenue Defendants appearing by their attorney Joe Morphew, and State Highway Defendants appearing by their attorneys, Thomas B. Keys, Chris Parker, and Ted Goodloe. From the testimony of the witnesses, exhibits and arguments of counsel, the court makes the following findings:

FINDINGS OF FACT

1. Act 685 of 1983 applies to trucks whose declared gross weight is between 73,281 pounds and 80,000 pounds.

2. Basically, Act 685 of 1983 requires those trucks to pay 5 cents per mile for miles operated in Arkansas, with the option to pay an annual $175 fee.

3. The annual fee of $175.00 presumes that those trucks operating in excess of 3500 miles will pay less than 5 cents per mile.

4. A tax which is fixed in amount (flat fee tax) for a period of time (such as one year) presumes that the tax impacts differently depending upon the use made of the privilege taxed.

5. Many taxes are based on an annual amount and the privilege bestowed is without restriction on its use.

6. A flat rate tax which is considered on a mileage basis falls with an unequal burden because those who travel more miles will pay a different per-mile-cost than those who travel less miles.

7. The Arkansas Legislature is not hampered by an inability to draft a flat rate tax which is going to fall with an unequal burden on a cost-per-mile basis.

8. No other findings of facts are required for a decision of this case.

CONCLUSIONS OF LAW

9. The constitutional arguments of plaintiffs' lawsuit are primarily based on the Commerce Clause of the U.S. Constitution.

10. Act 685 of 1983 does not violate the Commerce Clause of the U.S. Constitution.

IT IS THEREFORE ORDERED that the complaint of Plaintiffs is dismissed.

/s/ Bruce T. Bullion
Chancellor

10-11-84
Date

APPROVED:

/s/ Frederick K. Campbell
Attorney for Defendant
Jimmie Lou Fisher, Treasurer
FREDERICK K. CAMPBELL

/s/ Joe Morphew
Attorney for State Revenue Defendants
JOE MORPHEW

/s/ Thomas B. Keys
Attorney for State Highway Defendants
THOMAS B. KEYS

[TESTIMONY OF MR. MOHNEY]

[256] *Frank Mohney*, having been called by and on behalf of the Plaintiffs, testified as follows:

DIRECT EXAMINATION

BY MR. SAYRE:

Q State your name, please, sir?
A Frank Mohney, M-O-H-N-E-Y.
Q What is your address, please, sir?
A Route 2, Box 184G, Lowell, Arkansas.
Q What is your profession or employment, please?
A Employed by Jones Truck Line, Vice President of Marketing.
Q Do you have any office or relation with regard to the Arkansas Bus and Truck Association?
A Yes, sir, I'm President of the Arkansas Bus and Truck Association.

• • • •

[257] BY MR. SAYRE:

Q Has Jones Truck Lines, as an Arkansas based interstate carrier, complied with the provisions of Act 685 and paid the Arkansas Highway Use Equalization Tax?
A Yes, sir.
[258] Q When did you make that payment?
A Well, we made that payment when we filed our IRP application. I believe it was the last of June.
Q How much in Arkansas Highway Use Equalization Tax was paid by Jones Truck Lines?
A Sixty Three Thousand Three Hundred Fifty Dollars ($63,353).
Q How many of your three hundred and sixty two (362) trucks did the company qualify under the Act 685?
A All of them.

Q All three hundred sixty two (362)?
A All three hundred sixty two (362).
Q Does the company have other vehicles that it owns?
A Yes, sir.
Q What are those type?
A Well, we have city pickup and delivery equipment stationed in each one of the seventy two (72) terminals and they are normally licensed within that state.
Q And they will not . . .
A They do not perform an over the road operation.
Q And they will not carry more than this seventy three thousand two hundred eighty (73,280) pounds?
A No, sir.
Q How many Arkansas miles or how many miles did the [259] Jones Truck Line operate over the highways of the State of Arkansas in the last year? The one that you had to measure to qualify for the Highway Use Equalization Tax?
A Six million nine hundred twenty one thousand four hundred sixty five (6,921,465).
Q And of your total miles in all seventeen (17) states, what's that percentage?
A That represents twenty three percent (23%) of our total miles in Arkansas.
Q Does Jones Truck Lines operate in the State of Oklahoma?
A Yes.

• • • •

[261] BY MR. SAYRE:

Q Mr. Mohney, I will repeat the question. What type of taxes does Jones Truck Line pay to the State of Oklahoma generally?
A Well, we normally pay what taxes are assessed by them on our units as well as the taxes that we pay on property in Oklahoma or any equipment that is based there.

Q All right. Since July 1 of this year, has Jones Truck Lines been assessed any additional taxes?
A Yes, sir. We have been assessed a Hundred Seventy Five Dollars ($175) per unit that has—that is going through Oklahoma.
Q And what was the reason stated for such imposition of a tax?
[262] A That this was a mirror tax against the State of Arkansas.
Q Mr. Mohney, I'll hand you what's been marked Plaintiff's Exhibit One (1) and ask you if you can identify that, please, sir?
A Yes, sir. These are copies of tickets that our units have received in Oklahoma since July 1 for the annual mileage use tax.

• • • •

CROSS EXAMINATION

BY MR. PARKER:

[273] Q How does—how does Jones Truck Lines decide what it's ging to charge for hauling? Are y'all an ICC regulated carrier?
A Yes, sir.
Q So, then, you publish tariffs periodically, is that correct? And unless those tariffs are objected to by the ICC, they become your rate for your hauling and such?
A They are filed in the various rate bureaus, Rocket Nine and Federal West, et cetera.
Q Does Jones file individual or do they file as a group with other carriers in these regional rate bureaus?
A Well, we file both ways. We file as the bureau rates and we also have our own individual tariff.
Q How are those tariffs arrived at? Is there something like a rate base and a PSC case that you show what their expenses are in making that haul and then you receive a certain level of profit over that? How are

those arrived at and what form [274] are they reviewed by the ICC?

A Rates are primarily based on the cube that they will occupy in the trailer and anytime that you get a rate increase you have to justify the reason for that. Whether it be fuel increase, labor increase or whatever it is.

Q So, in the normal course of events, if there's an increase tax on a carrier, that will reflect itself in a revised published tariff as an increase in doing business?

A As an increase in doing business and passed on, ultimately, the consumer or general public.

Q Has Jones taken any steps in passing on the Oklahoma Merit tax on those routes to the consumers? Are you treating it as a permanent tax?

A No, sir.

Q When will that be done? Does Jones have any plans to pass that on?

A Yes, as soon as we find out if the Arkansas tax is permanent because that tax will be passed on to the Arkansas consumer as well.

Q You all do not, then, have a periodic republication of tariffs as simply the business judgment? If expenses require a new tariff you publish it, it's not something that's an annual or twice a year?

[275] A No, it's on need.

* * * *

[TESTIMONY OF MR. CORBUTT]

[286] John Corbutt, having been called by and on behalf of the Plaintiffs, testified as follows:

DIRECT EXAMINATION

BY MR. SAYRE:

Q State your name and address, please, sir?

A John W. Corbutt, 2001 Gum Potter Road, Little Rock, Arkansas.

Q What is your business address, please?

A 1122 West Capitol Avenue.

Q At the present time, by whom are you employed?

A I'm the Executive Vice President of the Arkansas Bus and Truck Association.

* * * *

BY MR. SAYRE:

[288] Q Did the Bus and Truck Association seek in this last legislative session to implement the size and weight provisions of the Service Transportations and Systems Act?

A Yes, we did.

Q Tell the Court what the Service Transportation and Systems Act is?

A It was a federal law passed known to the public as the five cent (5¢) fuel tax but also was in apposition of a highway use or tax on the trucking industry to raise money for highway funding which was passed by the Congress.

Q When was it passed, please, sir?

A I believe the effective date was January 6, 1983.

Q All right. That's this year?

A Yes, sir.

* * * *

[289] BY MR. SAYRE:

Q What was the size specifications or standardizations contained in that Act regarding to trucks?

A As I earlier said, they set a standard—a federal standard on highway sizes relative to vehicle sizes and forty eight (48) foot assembly trailers and twenty eight (28) foot trailers, eighty thousand (80,000) pound weights and a hundred and two (102) inch width.

Q And did that apply to across?

A Nationwide.

Q Nationwide. At that time there were three (3) states [290] that had not yet enacted a maximum weight of eighty thousand (80,000) pounds, is that correct?

A Yes.

Q And Arkansas was one of those?

A Illinois and Missouri, yes, sir.

• • • •

[TESTIMONY OF MR. VENABLE]

[472] *Charles Venable*, having been called by and on behalf of the Defendants, testified as follows:

DIRECT EXAMINATION

BY MR. PARKER:

Q State your name and address for the record.

A Charles A. Venable, 3110 Rodney Parham Road, Little Rock.

Q Where do you work, Mr. Venable?

A The Arkansas Highway and Transportation Department.

• • • •

BY MR. PARKER:

[474] Q I want to discuss with you what the effect's going to be if the Court continues to freeze the Highway Use Equalization funds after August 1. First, could you discuss what areas there are in the Department budget that simply can't be used to take up that slack?

A Of course, we have ongoing contract at this time that have to be paid off and, I believe, we still owe some Hundred Thirty Five Million Dollars ($135,000,000) on these contracts. We, also, have certain fixed costs such as salaries, overhead, certain expenses, thing of this nature that we could not eliminate.

Q When you talk about the contracts that are coming due, how are those things paid? Would you go into that a little bit?

[475] A Well, they are paid as the [work] progresses. The contractor submits an estimate and he's paid by estimate on the amount of work he has done.

Q Where will the freezing of the amounts we're talking about, Ten ($10,000,00) or Eleven Million Dollars ($11,000,000), have to be accomodated in the Department's budget?

A Well, at the present time looking down-range, the first place you would look in being—will be in the area of letting additional contracts.

Q Who makes the ultimate decision as to when contracts are let?

A Well, the Arkansas Highway Commission is the one that has the final decision as to when the contracts will be let.

Q So, what you're testifying to is basically what the staff's recommendations would be to the Commission?

A Yes.

Q Would it be possible to let contracts, full state contracts, with that Ten ($10,000,000) or Eleven Million Dollars ($11,000,000) of tax money?

A Yes, it would be.

Q Can you discuss some reasons why that might be desirable after August 1?

[476] A Well, of course, we have not been able—our financial situation has not allowed us to go in and do any work other than with matching federal aid for contracting in the past few years. There are several miles of road that need to be resurfaced in order to extend the life and certainly with heavier loads now. The reservicing of these would be a big benefit if we were able to do this by taking this money and using it for reservicing at this time.

Q You say that would extend pavement life that is currently wearing out because of the heavier loads?

A Yes. A lot of our miles are what we classify as in fair condition and by simply overlaying, we could extend the life of these some eight (8) to ten (10) years.

Q If the Commission made the decision that they wanted to use this Ten ($10,000,000) or Eleven Million Dollars ($11,000,000) from that special money—well, I'll come back to that. Will we receive any additional federal money for the 1983?

A Well, there's a possibility that some funds, and this is not additional funds, but simply funds that [477] —maybe I need to explain a little bit about what options we have. First of all, our monies—the federal dollars that have been received will be apportioned and will be obligated by the end of this month. There is a possibility of receiving additional obligation authority. During the past of 1980, the federal government has placed a limitation on the amount of federal funds that can't be obligated. As a result, we have had impounded—right now we have about Forty Million Dollars ($40,000,000) impounded that we have not been able to obligate and there is a possibility that some of the other states would not be able to obligate all off their '83 money and some of this would be available for us and there is a possibility that we could pick back up some of the money that is now impounded.

Q When will be know about that?

A I think it will probably be about the middle of August before we actually find out. The final report has to be to the Federal Highway Administration, I believe, on August 8.

Q Have we ever received funds or obligations—obligation money from this source in the past [478] and, if so, by how has this money amounted to?

A Yes, in 1981—fiscal year 1981, the same thing occurred and we were able to take advantage of this to the tune of about Thirty Two ($32,000,000) or Thirty

Three Million Dollars ($33,000,000), I don't remember the exact figure.

Q How much obligation money are we asking for? Have we made a request?

A Well, we will in our report which will go out probably tomorrow. It's due in the Little Rock office by August 3. We'll list some Thirty Seven and a Half Million Dollars ($37,500,000) of federal aid that we could possibly pick up.

Q How's that calculated? Is that based on specific jobs that we would like to be able to let?

A Yes, by job and by categories of funding to which you have the money available. Because the money is apportioned by counties.

Q If that redivision of money becomes available and if the Ten ($10,000,000) or Eleven Million ($11,000,000) of the Highway Use Equalization funds are unfrozen and a decision is in the position to use that match, will we be able to be in a position to contract on those funds?

A Yes.

• • • •

BY MR. PARKER:

[481] Q What are the matching ratios for the kind of jobs we would like to be able to use this money for?

A Well, it varies depending on the category of funds from, say, the interstate with ninty percent (90%) federal, ten percent (10%) state, bridge replacement eighty percent (80%) federal funds and twenty [482] percent (20%) state and the other are generally seventy five percent (75%) federal and twenty five percent (25%) state and on the average . . .

Q Based on the jobs that we know, we would have to go to contract with?

A Generally, that's an overall average, yes.

Q At that rate, what is the total amount of contracts we would be able to let using the Ten ($10,000,000) or

Eleven Million ($11,000,000) of the Highway Use Equalization Tax?

A Well, you could spend the Ten Million Dollars ($10,000,000) on a forty one (41) match. You can go to contract, say, for Fifty Million Dollars ($50,000,000).

• • • •

[504] THE COURT: Can you give me a guess? If I understand correctly—let me tell you what I'm trying to get at, Mr. Venable. If I understand correctly, this tax was passed on these trucks at an attempt to offset the extra damage that was going to be done to the road because of the extra weight?

THE WITNESS: That's true.

THE COURT: All right. What have y'all estimated was going to be that extra damage?

[505] THE WITNESS: We estimated, as I said earlier, at Thirty Two Million Dollars ($32,000,000) and if you bring that up to 1983 value it would be somewhere around Fifty Three Million Dollars ($53,000,000).

• • • •

[TESTIMONY OF MR. NICHOLS]

[516] *Brooks Nichols*, having been called by and on behalf of the Defendants, testified as follows:

DIRECT EXAMINATION

BY MR. GOODLOE:

Q State your name and address, please, sir.

A I'm Brooks Nichols and I live at 17008 Quail Run in Little Rock.

Q And what is your occupation?

A I'm the Assistant Chief Engineer for design for the Arkansas Highway and Transportation Department.

• • • •

[534] BY MR. GOODLOE:

Q What is the effect, Mr. Nichols, of using twenty (20,000) KIP axle loads? You said what percent increase or what amount of increase is this? I may not be saying that right but what is the effect of twenty (20,000) KIP axle load, a twenty thousand (20,000) pound axle load?

A It has the effect—it has the effect of increasing the relationship—well, of increasing the number of eighteen (18,000) KIP loads on the highway. When you just compare those two (2) axles between fifty one (51) ad fifty eight percent (58%).

Q It increases what between fifty one (51) and fifty eight percent (58%)?

A It increases the loading.

Q It increases the loading?

A Yes.

Q Now, what does that do as far as damage is concerned? How would you relate that to the damage to the highways?

A Well, as we said, those are two (2) of the principle ingredients, your soil and your traffic. So, that's [535] one of your factors and as you increase loading then you ultimately must have additional thickness. So, it increases the amount of pavement that you need to preserve the highway need.

Q So, we actually need a little thicker highway if we're going to have increased axle loads?

A That's right.

Q Did we design for twenty (20,000) KIP axle loads on Arkansas interstate highways?

A No, sir, we designed for the weight that we had at the legal maximum of the time which was seventy three two eighty (73,280).

Q What will be the effect, in your opinion, of going to twenty (20,000) KIP axle loads and a road vehicle

weight of eighty thousand (80,000) pounds on Arkansas highways?

A We analyze our interstate system over its expected life of twenty (20) years and increasing the loading from seventy three two eighty (73,280) to eighty thousand (80,000) pounds indicated to us that we would have a life loss. In other words, the pavement would not last as long. We would lose about ten percent (10%) of the life of our interstate pavements.

Q What do you mean by ten percent (10%) of the life? [536] You're going to have a gravel road out there?

A No, it will reach a point where it has to have some major additional rehabilitation to it. Not—you know, you're not going to let the interstate system go back to gravel. What we're talking about is that it will come down to a point that it is uncomfortable and at that point in time we consider it as reached its designed life.

Q And what kind of work have you been doing? What do you contemplate as the type of reconstruction, new construction or whatever you want to call it, what type?

A Well, there are different ways of doing it. One you can use a lot more funds in maintenance and try to keep it, you can go in and strengthen your pavement by putting additional thickness out there which is . . .

Q Is that called overlay?

A Yeah. It is an overlay. It can be made out of either rigid or flexible pavement. Normally, overlays are considered to be flexible but it doesn't have to be. It could be either one or the other. For instance, let me just tell you, if we had all the unlimited—just had money all we needed right now and we could go out there and take all [537] of our pavement system and put in an adequate amount of overlay to take care of the loads, then, they would last as long as we had expected them to last. But money is not there to do this. So, what you

do, you've got to start using it as you can or they're going to suffer early death.

Q Now, what are the effects of increased axle load on the interstate highways again?

A Our studies show that it would be a loss of pavement life of about ten percent (10%).

Q And what about the primary highways?

A The indication of the life and studies that we have done and you have to remember that we have a lot of primaries that aren't designed to the point that they should be even if you carry this seventy three two eighty (73,280) for the increase in weight, it just worsens and hastens the condition. It looks like to us that we're loosing about twenty five (25) to thirty percent (30%) life at our primary system as a total.

• • • •

CROSS EXAMINATION

[549] BY MR. MORAN:

Q Mr. Nichols, I believe you indicated on your direct that when you increase from an eighteen thousand (18,000) pound axle load to a twenty thousand (20,000) pound axle load that you ultimately need more thickness in your pavement?

A Yes, sir.

Q You're not necessarily indicating that you need any additional thickness immediately upon increasing [550] the load but you're ultimately going to need more thickness on that road over a course of time, is that right?

A Well, that isn't quite true. You need it immediately. If you want your pavement to last through a reasonable design life, you need an adequate pavement structure for the load that's going to be imposed on it. The facts of the matter is that's an impossibility. We have over sixteen thousand (16,000) miles of state highway system in our system. So, it's impossible to imme-

diately strengthen all of it, you know, and to take on a given day and time to take it. So, what you have to do is to utilize your funds the best that you can to strengthen them as you can accumulate funds. In the meantime, realizing that the pavements are continuing to get in worse condition during this period of time.

Q Would you be able to detect any of the deterioration difference over, say, a nine (9) month period if you were unable to increase the thickness? Say, over an eight (8) or nine (9) month period would you even be able to see that with the eye?

A Mr. Moran, it would depend on how badly the system was under design.

[551] Q I'm talking about on the ones that were designed properly, of course.

A The one that was designed for what?

Q Well, the ones that make the ASHTO test are the ones you indicated you designed?

A Well, I have designed some that have failed, sir. If you're asking about on an interstate highway system, could you in nine (9) months detect additional damage to the highway over and above what you would have had had the eighteen thousand (18,000) pound load stayed in effect, it would take a pretty critical determination over a nine (9) month period to detect the difference. It's going to—it's going to deteriorate. Everything deteriorates and the fact is that it would be deteriorating at a somewhat more rapid rate. But if you're in the early stages of it, it would be almost impossible to detect if it were new pavement. If you were at the very later stages of it I think it would be much easier to detect that increase in the weight. Because your life expectancy curve will steepen as it gets toward the terminal life of it and, so, damage is much more easy to detect.

Q The fact remains that the two (2) year loss of [552] service life, I believe you referred to it as, is

going to occur over a period of time. That loss builds up over a period of time, is that correct?

A It starts immediately and ends up over a shorter period. It just doesn't last as long. Is that what you mean, sir? If it's—if it were a very badly undesigned pavement, then, it would show up almost immediately. And we've got some real badly undesigned pavements in the State of Arkansas.

• • • •

[TESTIMONY OF MR. JOHNSON]

[554] *Ralph Johnson*, having been called by and on [555] behalf of the Plaintiffs, testified as follows:

DIRECT EXAMINATION

BY MR. MORAN:

Q Please, state your name and address?

A My name is Ralph Johnson and my address is 5101 Whiteflint Drive, Kensington, Maryland.

Q What is your profession?

A I am a Transportation and Management consultant.

Q What is the name of your consulting firm?

A The name of our consulting firm is Counsel Transit Incorporated.

• • • •

BY MR. MORAN:

[564] Q Okay. You also heard or did you also hear Mr. Nichols testify with regard to what he considered to be a ten percent (10%) loss of service life which he expressed another way. I think he expressed it in another way of saying that a road built for twenty (20) years of use might wear out in eighteen (18) years. Did you hear [565] him [a]llude to that in his testimony?

A He made that estimate for the interstate system and that is, you know, the common way of referring to this. That's what the loss of service life would mean because there is a twenty (20) year design period to

begin with and you would expect to have the road—the highway wear out in two (2) years earlier than that spread over that particular period. We did a study here a couple of years ago for, basically, a group of truckers to represent for the eighty thousand (80,000) pound loading at that particular time and we did a very scientific and technical study. We could not see any comparable technical analysis that the State had performed up to that particular time. I don't know what they have done since but up to that particular time we did, I think, a very thorough scientific job and we came up a seven (7). We took, basically, a twenty percent (20%) random sample of the pavements on the interstate system and to the actual designs by getting the design information from the Highway Department and determined basically the increase in cost that would be required in design or was required—not required in design, required at this current time to [566] upgrade those facilities—well, first of all, to upgrade them to the current—to take care of future axle loadings. At that time the current axle loading was seventy three two eighty (73,280) and, then, as an alternative to upgrade them to take care of eighty thousand (80,000) pound loadings and work out the cost differences between the two (2). And on this basis, we came up with a seven percent (7%) increase or about a one point three five (1.35), your actual reduction in service life on the interstate system as a result.

Q So, you differ with Mr. Nichols?

A Our findings at that particular time differ from Mr. Nichols findings of ten percent (10%), yes.

* * * *

BY MR. MORAN:

[571] Q Mr. Johnson, you heard the testimony, also, of Mr. Charles Venable—or let me ask you. Did you hear the testimony of Mr. Charles Venable?

A Yes, sir.

Q And I believe that he made a reference in answer to a question from the Court or gave an estimate of some

Thirty Million Dollars ($30,000,000) in damages. I hand you a document marked Plaintiff's Exhibit Thirteen (13), I believe. It is entitled Cost and Savings Associated With Changes in Weight Limits on Arkansas' Highways. It bears an October 1982 date. Did you prepare or have a hand in preparing that particular report?

A Yes. I directed the performance of this analysis.

Q It's prepared by your consulting firm, Counsel-Trans Incorporated?

A That's correct.

* * * *

BY MR. MORAN:

[588] Q In your 1982 study, I want to ask you, Mr. Johnson, at the current funding level at the Arkansas Highway Department, what would be the extra cost for the Arkansas roads to increase from seventy three thousand two hundred eighty (73,280) pounds up to eighty thousand (80,000)? In other words, what does your seven percent (7%) on the chart that you've drawn translate into in dollars to lay the thicknesses you've talked about?

A At the current program cost, Eight Million Dollars ($8,000,000).

* * * *

CROSS EXAMINATION

[662] BY MR. KEYS:

Q He either can or can't?

A I have said that at the optimal program level we found Twenty Six Million Dollars ($26,000,000), at the optimal level. The difference between that and the total damage, I don't know. I don't think that there is anywhere near that spread between that figure of Twenty Six ($26,000,000) and Fifty Three ($53,000,000) but that's all I can say.

Q All right. I'm going to ask you one more time. [663] Is the Twenty Six point One ($26.1) Million actual damages or is that something else?

A That's damages at an optimal program level that presumably took into consideration at that particular time all of the needs on the interstate system.

Q Well, then, it has no relationship to the Fifty Three Million ($53,000,000) that Mr. Venable testified to?

A The—I guess I have to put it on a judgemental basis. In my judgement, that Twenty Six Million ($26,000,000) does not warrant as high a figure as Mr. Venable's or is reporting here. But I have to say that's entirely in my judgment.

Q Well, in your judgement, how high a figure does it warrant?

A I couldn't give you any figure. I just said that that's too much of a spread and I'm not prepared to say what the spread should be.

Q How about Forty Four Million ($44,000,000)?

A I'm unprepared to say between here and there what it would be.

Q Mr. Johnson, you know what this lawsuit is about, don't you?

• • • •

[TESTIMONY OF MS. HAYDEN]

[1937] *Vickie Hayaen*, having been called by and on behalf of the Plaintiffs, testified as follows:

DIRECT EXAMINATION

BY MR. SAYRE:

Q Ms. Hayden, would you state your full name and address for the record, please?

A Vickie Hayden, 7802 Bonnie Brae, Little Rock, Arkansas.

Q What is your profession or employment?

A I'm a motor fuel tax auditor for the Arkansas Highway and Transportation Department.

Q And under those, that general job description, [1938] what are your responsibilities?

A I audit gasoline distributors, diesel suppliers and fuel users and any other research in the motor fuel area requested by my supervisor.

Q Do you know Mr. Gip Robertson?

A Yes, sir.

Q And did Mr. Robertson assign you a task in the last month with regard to a survey prepared by the American Trucking Association, or summary result of a survey?

A Yes, he did.

• • • •

BY MR. SAYRE:

[1939] Q What was your assignment in that regard?

A All right. Well, another auditor in our office and I were called into Mr. Robertson's office and he discussed with us that he would like for us to look at the two surveys presented by the ATA. The two auditors, Sharon Byrd and myself, determined between us which one would review the foreign based survey and which one would review the Arkansas based survey.

Q Which one did you review?

A I reviewed the Arkansas based survey.

Q What procedure did you follow on the Arkansas based survey review?

A The first we did was to review the companies listed in the ATA survey to see if those companies were licensed under the IRP. We then scheduled out those companies that did have accounts with IRP. We pulled those folders and scheduled out the costs of the HUE tax paid to IRP and the Arkansas mileage reported. And we compared those costs and mileage with the costs and mileage reported on the Arkansas based ATA survey.

Q Do you have any work papers showing the results [1940] of your work?

A Yes, I do.

Q Would you present that to us concerning that verification?

A Yes, sir.

Q I hand you what's been marked Plaintiffs' Exhibit Number 38 and ask if you can identify that, please, ma'am?

A Yes. This is the revised ATA survey information for the Arkansas based companies.

Q And is that your handwriting?

A Yes, it is.

Q What does that five page document reflect?

A Of the companies listed on the ATA survey we could only verify 79.75 percent. There were some of the companies, thirty-six of them, which were in a work and process file in the IRP and we were not able to review those companies. Of the 79 percent that we were able to review we found various discrepancies between the costs and mileage reported to IRP and the costs and mileage on the survey. And, therefore, we feel like. . . .

Q Excuse me. I asked what you found. You found discrepancies?

[1941] A We did find discrepancies, yes, sir.

Q How many discrepancies did you find?

A We found twenty of the Arkansas based carriers out of the hundred and two that we were able to review the files had discrepancies on the costs paid to IRP, that varied from the costs on the survey. Thirty-two. . . .

Q Which ones are those? Are they designated in some manner?

A Yes. There's a black dot by the tax cost.

Q A black dot? Which column is that, please?

A Column seven.

Q Would you give us an example?

A The very first one listed in account number 3744, A & M Enterprises. . . .

Q Where is the black dot?

A On my report it's right to the left of the dollar figure.

Q All right. So all of those, you said, were discrepancies?

A Yes, sir.

Q Those that do not have dots you confirmed?

A Yes, sir.

Q How many did you confirm then?

A There were eighty-two that agreed with the [1942] costs as far as the IRP costs reported and the costs on the survey.

Q Eighty-two out of how many?

A Out of a hundred and two.

Q So you said that basically eighty percent agrees. Is that correct?

A Agreed on the costs. I also broke it out as far as discrepancies on the mileage. Thirty-two out of the hundred and two carriers' mileage reported to IRP varied from the Arkansas mileage on the survey.

Q How many agreed?

A That would be seventy.

Q All right. Did you check the Arkansas mileage based upon the accrued Arkansas and reciprocity miles, or just the Arkansas miles?

A Just the Arkansas miles. Those miles traveled in Arkansas.

• • • •

BY MR. SAYRE:

[1943] Q All right. What else . . . . you said there were thirty-two. How did you designate those?

A All right. There's a black dot to the left of column 8.

Q All right. What else did you do?

A After we scheduled out all of these companies we did make a total of our work sheet. We also came up with an IRP cost per mile and compared that cost per mile to the cost per mile on the ATA survey.

Q And that appears on page 5 at the bottom of the column?

A Yes, sir.

Q And is this average figure, the IRP cost per mile, an average of the averages, or is it a average of the IRP tax costs that you've written and divided by the number of IRP miles?

A It's an average of the average.

Q It's an average of the averages?

A Yes, sir.

Q So, in other words, you found a mean average as opposed to dividing the total numbers?

A Yes, sir.

[1944] Q For the total miles?

A Yes, sir.

Q Why did you do it that way?

A Well, I thought that because we were looking at a per company cost per mile that the cost per mile per company was going to vary because of the number of trucks registered and the number of miles driven. And so it more fairly represented the company's average cost per mile.

Q All right. You were figuring companies' cost, not vehicle cost, is that correct?

A That is correct.

Q So that if a carrier had two hundred trucks and another carrier had two trucks you would compare the companies' cost, not the total of the two hundred two vehicles with an average? Is that correct?

A That is correct.

Q What did your figures show where the—excuse me. Your figures on this Plaintiffs' Exhibit 38 reflect—not the ATA figures, but the figures you extracted from the actual records of the IRP section of the Arkansas Department of Revenue, IRP section?

[1945] A Yes, sir. Columns 6 through 9 represent the IRP. Columns 12 through 14 represent those figures on the ATA survey.

Q What result did you reach on the IRP tax costs using your company averages?

A Using the company average, the IRP cost per mile totalled out to be one cent per mile.

Q Is it rounded up to one cent, or less than one cent?

A No. It was one cent.

Q Even?

A Even. Using the first four digits.

MR. SAYRE: Your Honor, I would offer Plaintiffs' Exhibit Number 38.

THE COURT: Any objections?

MR. GOODLOE: No, Your Honor.

THE COURT: Without objection, 38 will be received.

• • • •

CROSS EXAMINATION

BY MR. GOODLOE:

[1947] Q You were finishing a sentence and Mr. Sayre interrupted you and I believe you were talking about your feelings of the results of the work that you did. Would you finish that, please?

A We just felt that we could not come to any valid conclusion as to a cost per mile because there were so many discrepancies between the figures reported to IRP and the figures on the ATA survey.

Q It looks to me like the figures are, you know, roughly seventy and eighty percent accurate. Is that the way you would do it? You would subtract twenty from a hundred and [1948] two and thirty-two from a hundred and two and in pretty rough terms it would be seventy and eighty percent accurate, is that correct?

A Well, I took the total discrepancies, which were twenty discrepancies on costs and thirty-two discrepancies on mileage, which was a total of fifty-two discrepancies noted which was fifty-one percent discrepancies.

Q So the discrepancies is not seventy or eighty percent?

A Right.

Q It's what?

A It is fifty-one percent.

Q Fifty-one percent of what?

A Of the hundred and two carriers' mileage and cost that we were able to review.

Q The hundred and two carriers represent what percent of the carriers on the ATA survey?

A Represent fifty-nine percent of the carriers that are represented on the survey.

Q So you were saying you could only verify fifty-one percent of the survey that you could only find find fifty-nine percent to begin with. Is that right?

A Yes.

• • • •

[TESTIMONY OF MS. BYRD]

[1957] *Sharon Byrd,* having been called by and on behalf of the Plaintiffs, testified as follows:

DIRECT EXAMINATION

BY MR. SAYRE:

Q Would you state your name and address, please? [1958] A Sharon Byrd. My address is 218 North Taylor, Number 11, Little Rock 72205.

Q What is your profession or employment, please?

A I'm a tax auditor for the Arkansas Highway and Transportation Department.

• • • •

[1963] BY MR. SAYRE:

Q Ms. Byrd, we were talking about what you were assigned to do by Mr. Robertson. What was that, [1964] please?

A To take the report by the ATA over to the Revenue Department to compare it with the costs they had presented.

• • • •

BY MR. SAYRE:

[1968] Q Were you given any special assignment with regard to modifying the ATA study?

A One problem we found in looking at the figures. . . .

Q Excuse me. Were you assigned a special task?

A I was assigned to verify the figures presented in the ATA report and to determine if they had an accurate figure and cost per mile figure arrived at.

Q Were you given a special task by Mr. Robertson to modify the ATA study to make it reflect what the Highway Department figures reflected on actual dollars collected?

A In order to determine if ATA had presented a figure that was, that could be verified, we did decide that we needed to bring the quantity represented for the one seventy-five [1969] option carriers up to proportion that was related to that represented by the five cent per mile carriers.

• • • •

[1971] Q No, how did you go about it? You said you modified the ATA study.

A Okay. What I did, I took the one from the Highway Users Tax Unit at the Highway Department for all who were on the one seventy-five option program. I went through those companies and added additional companies that were not used on the ATA survey.

Q You modified the study by adding carriers and vehicles that had not been reported through the ATA

study at the hundred seventy-five dollar option that appeared on the records of the Highway Department?

A Correct.

Q To supplement the ATA study to make the total dollar figures balance with what you said the Highway Department's. . . .

A Actual cash receipts were at that point.

• • • •

BY MR. GOODLOE:

[1973] Q So was that sufficient to bring it into balance?

A No. With all of these . . . . with the number . . . . now, I'm saying that with the use of these . . . . we were not able to obtain the information on all of these that we scheduled.

Q Well, was that sufficient to bring it into balance?

A No, it was not.

Q Did you add any more?

A No, we did not, due to the time factor. This is where I stopped. At this point we had reached a little over half of what we needed.

• • • •

BY MR. SAYRE:

[1974] Q Ms. Byrd, I hand you what's been marked Plaintiffs' Exhibit 39 and ask you what that is, please?

A It is the Extended Arkansas/Foreign Based ATA Taxpayers Highway Use Operating Characteristics Schedules audited by the Highway Department.

Q And is that the worksheet on which you reflected the addition of the carriers that were not in the ATA study to bring it up to the same proportion?

A Yes, it is.

• • • •

BY MR. SAYRE:

[1984] Q Ms. Byrd, the results that you found on the study that you conducted on Plaintiffs' Exhibit Number 39, did you then add those to [1985] the ATA study figures?

A Yes, I did.

Q And come up with a total that is comparable to the totals reflected in your records as of August 23, 25 or whatever you said it was?

A Well, we did add them into the ATA figures.

Q Now where did you add those in?

A I have done this on a scratch sheet.

Q I hand you what's been marked as Plaintiffs' Exhibit Number 40 and ask you if that is a copy of that scratch sheet?

A Yes, it is.

• • • •

[1986] Q I was just asking when you added it. With regard to Plaintiffs' Exhibit 40, would you explain what you did to supplement the ATA study with the hundred seventy-five dollar figures you found on Plaintiffs' Exhibit 39?

A Yes. I just took. . . . I copied down the figures they had for the five cent per mile option carrier. I also carried down the information they had presented for the one seventy-five annual option carriers, added to the one seventy-five option figures the figures we obtained in our sample to come up with a revised total and came up with the revised estimate as to cost per mile.

Q In other words, you were attempting here to modify the ATA studies to bring it into a proportion with what you said the actual universe, or the actual records, of the Highway Department showed by adding the hundred seventy-five dollar method or option carriers to that total. Is that correct?

A Correct.

Q You didn't modify the five cents people at all, [1987] is that correct?

A Well, any modification if you're still working with mileage and cost figures you're still going to come out with five cents per mile. So what we were trying to do is bring this half of the average up proportionately.

Q What I'm saying is, you didn't lower the five cents?

A No.

Q You left that as standard and brought the hundred and seventy-five dollars up to the standard?

A Yes.

Q Okay. And when you added those together what are the totals that you received for the hundred seventy-five dollar method?

A All the way down there were two hundred sixty-one carriers; number of trucks, twenty-one thousand eight hundred forty-three; truck miles in Arkansas, one hundred seventy-four million, one hundred forty-two thousand, two hundred forty-five; Arkansas truck miles per truck, seven thousand nine hundred seventy-two; HUE tax expense, three million eight hundred twenty-two thousand five hundred twenty- [1988] five dollars; HUE tax expense per mile, .0220.

Q And that .0220 is the figures reflected in the ATA study plus the figures that you computed from Plaintiffs' Exhibit 39 totally and then the average of those two figures?

A Yes, it is.

Q When you added that total to the total for the five cent option that you brought it up to reflect the proportion, what was the total cost per mile for foreign based carriers that you determined?

A The revised estimated cost per mile would be .0320.

Q And what was reflected in the ATA study over-all?

A That was .0358.

Q So there would be reduction by adding the hundred and seventy-five dollar option carriers who were not in the

ATA study, it would lower the figures by approximately three tenths of a cent. Is that correct?

A Yes.

• • • •

[1994] CROSS EXAMINATION

BY MR. GOODLOE:

Q Ms. Byrd, -did you do some computation on vehicles on the Hughes' ATA Survey on the Arkansas list and the out of state list on what it would cost some of those carriers [1995] to operate per mile based on the license fees? The license fees per mile?

A Yes, I did a sample schedule on both the Arkansas based and foreign based.

Q All right. The Arkansas based carriers on the ATA survey that you checked for accuracy of license fees, what was the range of license fees per mile?

A They range anywhere from eighty-four hundred . . . . eighteen to 19.88 cents per mile.

Q What was the average?

A The average was about 2.6 per mile.

Q What about the foreign based on the Hughes ATA survey?

A The foreign based companies ranged anywhere from fifty-five one hundredths of a cent to 1.8 cents per mile and that averages about 1.1 cents per mile.

Q And the comparison for the in-state and out-of-state license fees cost per mile?

A It's about two to one, approximately.

Q Do you have your work schedule?

A Yes, I do.

Q That bears out the work you did and what you just testified to?

[1996] A In regard to license fees, yes.

MR. GOODLOE: I'd like to have this marked Defendant's 14.

MR. SAYRE: No objections, Your Honor.

MR. GOODLOE: I would move to introduce Defendant's 14, Your Honor.

THE COURT: Without objection, Defendant's 14 will be received.

• • • •

BY MR. GOODLOE:

[1998] Q Now, again, why is it you feel that your data is not adequate?

A Here again, we're working with three apparently different systems that do not correlate.

Q Were you able to get sufficient numbers into the comparison also?

[1999] A No.

Q Did you perform any other work at the direction of Mr. Robertson or someone to verify the ATA survey?

A I did a verification worksheet.

Q What did you attempt to verify?

A Well. . . .

MR. GOODLOE: I would have this marked as Defendant's 15.

A We attempted to verify the vehicular mileage figures presented on the ATA report, which we compared them to IRP and motor fuel tax records.

Q How complete is this offered Defendant's Exhibit 15?

A Well, it is not a completed worksheet because we kept finding so many discrepancies. For example, one of the companies on my side, Lewis Transfer Company, we compared the ATA vehicle number, which was a hundred and two, to IRP, and there they registered a hundred and thirty-three. In comparing Arkansas mileage, the ATA report presented the figure five hundred forty-three thousand seven hundred [2000] fifty-three miles. IRP had three hundred seventy-two one hundred sixteen miles. Motor fuel tax had six hundred ninety-one thousand nine hundred thirty-eight miles. We found

instance after instance of discrepancies like this and just felt there was no need to continue.

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[TESTIMONY OF MR. HUGHES]

[2050] *Douglas A. Hughes*, having been called by and on behalf of the Plaintiffs, testified as follows:

DIRECT EXAMINATION

BY MR. SAYRE:

Q Would you state your name and address for the record, please?

[2051] A Douglas A. Hughes, 8807 Tuckerman Lane, Potomac, Maryland.

Q What is your profession or employment, please, sir?

A I am Director for State Laws of the American Trucking Association headquartered in Washington, D.C.

• • • •

BY MR. SAYRE:

[2111] Q Mr. Hughes, I've handed you what's been marked Plaintiffs' Exhibit Number 52 and I will ask if [2112] you can identify that, please?

A Yes. This is an exhibit prepared by myself reflecting the total highway tax cost for a typical vehicle including registration cost, fuel cost and Highway Use Equalization Tax cost.

Q When you say for a typical vehicle, where did you get that information of a typical vehicle?

A The Federal Highway Administration every four or five years issues a publication entitled *Road User and Property Taxes on Selected Motor Vehicles*. The most recent such publication was issued just last year, 1982. That publication has a variety of vehicles in it ranging

from small passenger cars up to the heaviest truck combination. And for the kind of vehicle which we are considering here I selected one of the typical vehicles in that study and used it as a basis for making this comparison.

Q Which vehicle did you choose?

A It is a five axle tractor semi-trailer registered at a gross weight of seventy-eight thousand pounds and operating annually some seventy thousand miles.

* * * *

BY MR. SAYRE:

[2115] Q Would you identify that, sir?

A Yes. This is a Federal Highway Administration booklet entitled *Road User and Property Taxes on Selected Motor Vehicles* issued last year.

MR. SAYRE: Your Honor, I would offer Plaintiffs' 53 into evidence.

THE COURT: Now, what about it?

MR. PARKER: No objection to 53 being introduced.

THE COURT: Fifty-three will be received.

[THEREUPON, the document as identified was received in evidence as Plaintiffs' Exhibit Number 53 and is attached to this record under separate cover].

MR. SAYRE: (Continuing)

Q Would you describe to the Court, Mr. Hughes, what is the Road User and Property Taxes publication of the Federal Highway Administration of [2116] the United States Department of Transportation and your understanding of how it's been compiled and what it's used for?

A It is a publication issued by the Department periodically describing road user and property taxes on a variety of vehicles which are each described in exacting detail in table one. It starts on page 12 in the publication. It's on pages 12 and 13. The vehicle which we have used with respect to this case is vehicle number 11 which

is a three axle tractor pulling a two axle trailer, diesel powered. And a variety of characteristics of that vehicle are described in minute detail in Table One including its cost, its empty weight, its gross weight, its annual miles of operation, fuel consumption cost, etc.

Q With regard this data, how is it collected by the federal government?

A The federal governmental looks at the vehicle population in use and on that basis characterises these fifteen different types of vehicles in the vehicle population based upon a statistical sampling.

Q This includes everything from three categories [2117] of passenger cars, a number of single unit trucks from pickups to dump trucks and the semi-tractors up to the heaviest trucks and also even includes motorcycles?

A Yes.

Q Is this information within your industry generally recognized as a standard, or how is it used in your industry?

A We use it for a variety of statistical purposes as a basic reference in our office and the offices of each of our affiliated state associations. And it is my understanding that the Federal Highway Administration provides broad distribution of this, not only to the Federal Highway Administration offices around the country but also to a variety of state governmental offices.

Q And is this information utilized by the Federal Highway Administration itself when it testifies, say, before Congress with regard to cost, highway operating costs?

A My understanding is that they use that publication before Congress on a regular basis, yes.

Q All right. Then would you explain to the Court [2118] on Plaintiffs' Exhibit 52, which is the exhibit you have prepared extracting this information, what information you have used in this particular study?

A Well, the principal number drawn from Exhibit 53 used in our Exhibit 52 would be seventy thousand miles of annual operation for the vehicles everywhere.

Q What about the registration fee? What is that in Arkansas?

A For this typical vehicle qualified for operation at seventy-eight thousand pounds, the registration fee is one thousand forty-four dollars.

Q What about the fuel tax application?

A The fuel tax cost at ten and a half cents per gallon distributed over 5.1 miles per gallon certainly for the Arkansas based vehicles as well as the foreign based vehicles arithmatically works out to be 2.06 cents per mile.

Q And what about the Highway Use Equalization Tax we have in question here? How have you applied that or reflected that on this exhibit?

A In Exhibit 52, of course, since there is a dissimilar impact for Arkansas based and [2119] foreign based carriers we have reflected that based on our findings in Exhibit 45 and 46 reflecting the .89 cents per mile for the Arkansas based carriers and the 3.58 cents per mile for the foreign based carriers.

Q In your study what have you referred to as a foreign based carrier?

A Well, a motor carrier vehicle based registered in jurisdictions other than Arkansas. The same list of carriers found in Exhibit 45.

Q And what were the findings of the cost per mile of operation for these three types of taxes on a typical vehicle that would travel seventy thousand miles in the State of Arkansas?

A When these three tax costs are added together the total highway tax cost of the Arkansas based vehicle is 4.44 cents per mile. And, yet, because of the experience reflected in Exhibits 45 and 46, it is sixty-one percent higher, or 7.13 cents per mile, for the foreign based vehicle. The difference being the difference created by the Highway Use Equalization Tax.

Q Which would be a cost of almost two to one, is that correct? Or a hundred and seventy- [2120] five percent?

A The registration cost and the fuel tax cost are neutral. They are identical once you define your typical

vehicle and apply it equally both for Arkansas based and for foreign based. And when you add the three costs together the foreign based has a cost of sixty-one percent higher than the Arkansas based.

• • • •

BY MR. SAYRE:

[2122] Q I've handed you what was marked Defendants' Exhibit Number 11, Mr. Hughes, which was a representation, I believe, of a chart prepared by Ms. Gerke, the IRP clerk from the Revenue Division. In that study there are costs for registration, I believe, that are different, they are not the same. Would you explain the difference between Defendant's Exhibit Number 11 and Plaintiffs' Exhibit [2123] Number 52 on the representation of these costs?

A Exhibit 11 characterises three separate vehicles, each of which operated seventeen thousand miles in Arkansas, but operated a different total miles, so they're in fact very different vehicles. Vehicle one in Exhibit 11 operated a hundred and forty thousand miles, vehicle number three operated ninety-five thousand miles and vehicle two, in the example provided in Exhibit 11, operated a total of two hundred and twenty thousand miles in a year, which is a very high annual mileage. In fact, at fifty miles an hour he had forty-four hundred hours of operation in one year.

Q The typical truck the Federal Highway Commission comes up with, or Administration, comes up with seventy thousand miles traveled for that truck during that time frame. Is that correct?

A Annual mileage totally, yes. And registration cost is a function of total miles.

Q But the typical truck found by the Federal Highway Administration traveled seventy thousand miles a year, one of the five axle, heavy, seventy-eight thousand plus, registered trucks?

A Yes.

[2124] Q As opposed to some two hundred thousand miles a year?

A That is correct.

Q All right.

A Frankly, with respect to Exhibit 52, in characterising the registration cost of one thousand forty-four dollars we have spread it over the seventy-thousand miles and we get 1.49 cents per mile. That would be true whether it be an Arkansas based vehicle or a foreign based vehicle. It is a neutral tax. If that foreign based vehicle operated, for example, ten percent of its miles in Arkansas its fees to Arkansas would be ten percent of Arkansas' fees, a hundred four dollar forty cents, spread over seven thousand miles and you would still come out with this 1.49 cents per mile. When you apportion registration cost, regardless of the miles, it will be a neutral tax unless the vehicle operates a different total of miles. And I know of absolutely nothing that would suggest to me that Arkansas vehicles are operated any less efficiently than our vehicles base registered in other jurisdictions. So it is a neutral tax.

[2125] Q Again, based upon the total mileage of the vehicle operated?

A Yes. The only way that you would see vehicle registration costs reflected with a different cost per mile for Arkansas than foreign based is if their total miles were different. And the only way the Arkansas cost could be higher is if Arkansas vehicles were in fact operating less efficiently than vehicles base registered in other jurisdictions.

• • • •

REDIRECT EXAMINATION

BY MR. SAYRE:

[2169] Q Mr. Hughes, would you explain the difference [2170] between Plaintiffs' Exhibit 56 and 51 and where the changes are and where they came from?

A Yes. There's only one change really and it is in the display under the annual vehicle registration category of the arithmatic which led to the cost factor for registration of 1.49 cents per mile. We have looked separately at the typical vehicle based upon Arkansas miles as found in Exhibits 45 and 46 which are the ATA studies and we've calculated for the Arkansas based vehicles the registration fee showing nineteen thousand three hundred eighty-six miles in Arkansas of the total seventy thousand miles for an apportionment factor of 27.7 percent times the registration fee of one thousand forty-four dollars is a registration cost to Arkansas of two hundred eighty-nine dollars thirteen cents. That apportioned registration cost distributed over the nineteen thousand three hundred eighty-six Arkansas miles gives a registration cost of 1.49 cents per mile. And for the foreign based vehicle a similar calculation based upon two thousand three hundred eighty-nine Arkansas [2171] miles which leads to an apportion factor of 3.4 percent, a registration cost of thirty-five dollars and sixty-three cents spread over the Arkansas miles for a registration cost of 1.49 cents per mile. All other material in Exhibit 56 are identical to Exhibit 51.

Q The cost per mile for registration fee then has been computed utilizing the same base figures reported on the ATA study for total miles for foreign non-Arkansas based trucks and Arkansas based trucks?

A For Arkansas miles based upon the numbers in 45 and 46 and total miles, of course, is the seventy thousand miles, the typical vehicle identified in the Federal Highway Administration report.

Q And from your experience in the trucking industry —you testified of course what that experience is—would you say that seventy thousand miles for a heavy truck is an average or a median that is approximated?

A Yes.

Q And the result then on 56, Plaintiffs' 56, as opposed to 51 is exactly the same when you have the

Arkansas miles and—excuse me—[2172] the Arkansas miles of the Arkansas carriers and the Arkansas miles of non-Arkansas based vehicles added—or excuse me—utilized in making the apportionment, it would still come out to the same figure a seemingly typical vehicle in the government study?

A Yes, it will. Exhibit 56 graphically displays what I attempted, perhaps inadequately, this morning to explain.

• • • •

[TESTIMONY OF MR. RALLS]

[2255] *Rawleigh Ralls*, having been called by and on behalf of the Defendants, testified as follows:

DIRECT EXAMINATION

BY MR. GOODLOE:

Q Would you state your name and address for the record, please?

A My name is Rawleigh Ralls, I live here in Little Rock at 12901 South Ridge Drive.

Q How are you employed?

A I am employed as the president of a research oriented consulting firm also located here in Little Rock named Education Research Associates, Incorporated.

• • • •

BY MR. GOODLOE:

[2265] Q Dr. Ralls, did the Highway Department employ you in regard to this case?

A They have.

Q Would you explain to the Court the nature of your involvement concerning this case?

A Well, the nature of my involvement in this [2266] case goes back to, I think, a period sometime around the 4th of July this year. And you came and called on me

to ask my opinion as to certain aspects of what you and I have come to call the Hughes' survey. This was the preliminary finding from the sample of responses to the American Trucking Association questionnaire that Mr. Hughes has indicated previously that was sent out to a selected list. And I looked at the result of that survey and as well as the facts as best the State of Arkansas knew it at the time in July as to the true population of carriers, trucks and the choice of either option one or option two for the incremental tax of a hundred seventy-five dollars or, alternatively, in the form of five cents a mile. And I found that the respondents in the preliminary survey that had been turned over to you and you were having me look at were not representative of the population of the trucks registered in the State of Arkansas. That was my first involvement with you and my response. And, after I looked at the actual population and then the respondents' survey, I told you that the sample of the respondents to the survey were not [2267] representative of the population as a whole. And because they were not representative of the population as a whole then any numerical findings from that survey could not be used inferentially with respect to the population of carriers and trucks paying the tax in the State of Arkansas. That was the first thing.

• • • •

CROSS EXAMINATION

BY MR. SAYRE:

[2297] Q What percentage then of the total universe is represented by Plaintiffs' Exhibit 51?

A In terms of carriers about in excess of twenty percent. In terms of trucks, about seventy-five percent.

Q Seventy-five percent of the trucks?

A Yes.

Q So you would assume, or could you draw an inference, that a lot of small carriers did not respond?

A I think that's a fair implication from these numbers, yes.

Q All right. If seventy-five percent of the trucks are involved what about the number of dollars represented? What percentage is that of the universe?

A It should be proportionate.

[2298] Q In other words, another seventy-five percent?

A Of the taxes collected.

Q And. . . .

A It's almost nine million out of twelve million. I think that's the bottom line on the state collections.

Q And based upon that seventy-five percent response, the total cost per mile for operating both under the nickle a mile and the hundred seventy-five dollar option for all of those vehicles was 3.2 cents per mile?

A That's the incremental cost as it results from this tax as it has been accepted by the carriers at their option.

Q And what was the cost for the Arkansas registered carriers? The cost per mile?

A On this exhibit it shows slightly less than a penny.

Q Did you do any study of the Arkansas results that were received from the ATA study?

A No, I did not.

Q Well, if the . . . . as a statistician, if you assume that the cost of an incremental measure is 3.2 cents per mile for seventy-five percent of the trucks, that the cost for the other twenty-five [2299] percent would have to be totally different to make that cost come down to a penny a mile, would it not?

A It couldn't come down.

Q It could not come down?

A No.

Q So if you had the rest of the universe reflected under Plaintiffs' Exhibit Number 51 the cost would still not come down to a penny?

A I don't think that if the entire universe were reflected, that is, everyone responded to the American Trucking Association's survey, that you would have results that are terribly different from the 3.2 cents per mile for this incremental tax. I think it would be close to that value.

• • • •

BY MR. SAYRE:

[2300] Q So if the other twenty-five percent were available it still could not, or probably would not, be less than the three cents or 3.2 cents per mile?

A It would be approximately that value.

Q All right. So that you can draw the inference that from the data collected that the cost is at increments per mile, increments of operation there, would be approximately 3.2 cents per mile from the data that has been collected and compiled?

A As it's measured on a per mile basis, yes.

• • • •

BY MR. SAYRE:

[2301] Q From a rough analysis of that data then, you've drawn the conclusion that the cost will remain fairly constant if the other twenty-five percent were added, about 3.2 cents per mile?

A It's my opinion, Mr. Sayre, that if in fact everyone responded, you got the missing part [2302] of the population, that your cost per mile figures that are shown here on this would not be drastically different from those shown here on Plaintiffs' Exhibit 51.

• • • •

PLAINTIFFS' EXHIBIT 6

INTERNATIONAL REGISTRATION PLAN

with official interpretations

AMERICAN ASSOCIATION of MOTOR VEHICLE ADMINISTRATORS

Adopted 9/13/73

Revised as amended 4/1/82

FOREWORD

The International Registration Plan is a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of fleet miles operated in various jurisdictions.

The unique feature of this Plan is that even though license fees are paid to the various jurisdictions in which fleet vehicles are operated, only one (1) license plate and one (1) cab card is issued for each fleet vehicle when registered under the Plan. A fleet vehicle is known as an apportionable vehicle and such vehicle, so far as registration is concerned, may be operated both interstate and intrastate.

The International Registration Plan is a product of the American Association of Motor Vehicle Administrators and, thus, is recommended for adoption by all jurisdictions.

AMERICAN ASSOCIATION OF
MOTOR VEHICLE ADMINISTRATORS
1201 Connecticut Ave., N.W.
Washington, D.C. 20036

Printed courtesy of
AMERICAN TRUCKING ASSOCIATIONS, INC.

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TEXTUAL NOTE

Throughout this publication of the International Registration Plan the specific provisions of the agreement are presented in this ten point Times Roman type.

The agreement has been the subject of interpretation under the provisions of Article XIX.D, and as a result of this effort, two types of commentary are included herein.

[The commentary provisions not voted by the member jurisdictions, are shown in this smaller eight point Times Roman type.

The "official commentary," voted by the member jurisdictions under the provisions of Article XIX.D, is shown in this eight point italic Times Roman type.]

INTERNATIONAL REGISTRATION PLAN

I—Purpose and Principle

[This Article sets forth the guiding purposes and principles of the International Registration Plan (herein cited as the IRP or Plan) as envisioned by its drafters.

The Plan should be construed in accordance with its underlying purposes and principles. The text of each Article should be read in the light of the purpose or principle of the provision in question, as well as those of the Plan as a whole; and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and principles involved.]

A. This reciprocal agreement shall be referred to, cited and known as the International Registration Plan.

[This Section indicates the official name of the "reciprocal agreement." Because the participation of the Provinces of Canada was anticipated, the term "international" was ultimately included. (See page 2, Minutes of the AAMVA Ad Hoc Committee Meeting to Develop Implementation for National Proportional Registration held in Washington, D.C., on May 30-31, 1973.) *The term "reciprocal agreement" is used here to indicate that participating jurisdictions mutually agree to provide for reciprocal vehicle registration unless appropriate exceptions to Plan provisions are approved pursuant to Article XVII.* (See commentary under Article I.E.).]

B. It is the purpose of this agreement to promote and encourage the fullest possible use of the highway system by authorizing the proportional registration of fleets of vehicles, and the recognition of vehicles proportionally registered in other jurisdictions, thus contributing to the

economic and social development and growth of the jurisdictions.

[*Freedom of vehicle movement is a fundamental principle of the Plan. This freedom is to be attained by authorizing the "proportional registration" of fleets of vehicles.* (The term "proportional registration" is not defined in Article II definitions, but is explained under fleet registration fee determination in Article III: see commentary thereunder.) *Proportional registration promotes and encourages the fullest possible use of the highway system, thereby ". . . contributing to the economic and social growth of the jurisdiction."* (Most of this provision is taken from the Uniform Vehicle Code.) *The "proportional registration" system makes possible greater flexibility of commerce between and among the participating jurisdictions. Such efficient use of the highway system is beneficial to the economic and social growth of the member jurisdictions.*

Freedom of vehicle movement is achieved through official "recognition" of proportionally registered vehicles in all member jurisdictions. If a fleet is registered pursuant to the IRP in the "base jurisdiction" and appropriate fees are paid to other member jurisdictions through which the registrant intends to operate such fleet, "recognition" of the base jurisdiction's distinctive identification plates for that fleet is authorized. (The choice of terms in this provision may give rise to some confusion unless read in the light of the Plan's overall purpose. The commentary on Articles I.C., I.D., I.E. and II.K. develops this concept in more depth.)]

C. It is the purpose of this agreement to implement the concept of one registration plate for one vehicle.

[*Only one identification plate is issued to each vehicle for purposes of vehicle registration. Under the*

IRP, only the "base plate" is required; no other exterior vehicle registration identification is allowed for licensing purposes. (Under the Uniform Vehicle Registration Proration and Reciprocity Agreement, in contrast, each vehicle carries a so-called "backing plate" upon which the member jurisdictions may require the annual placement of a "sticker" or "decal" indicating currently valid registration, in addition to the base jurisdiction's registration plate); (See Article XVII.E).]

D. It is the purpose of this agreement to grant exemptions from payment of certain fees when such grants are reciprocal.

[The drafters of the Plan recognized that not all fees are apportionable fees and they wanted to encourage reciprocity on those non-apportionable fees. *Those non-apportionable fees under this section may be subject to exemption under separate reciprocal agreements.* (See Article III.B. and commentary thereunder.)]

E. It is the purpose of this agreement to grant reciprocity to proportionally registered fleets of vehicles, and to provide for the continuance of reciprocity granted to those vehicles that are not eligible for proportional registration under the terms of this agreement.

[*Proportionally registered fleets of vehicles must be granted "reciprocity." Fleets of vehicles not so registered are subject to pre-existing registration requirements but may, nevertheless, be granted "reciprocity." Vehicles displaying "restricted plates," such as farm vehicles for example, may be exempt from additional fees if the jurisdiction's law, applicable agreements, understandings or declarations so provide. Fleets of vehicles properly registered under the IRP are not charged additional fees by member jurisdictions unless such fees are authorized under*

Article III.B. (See commentary thereunder.) *The IRP, therefore, provides for an exemption from such additional fees. The IRP is a reciprocity agreement providing for ". . . the recognition of fees paid to other jurisdictions."* (See page 2, Minutes of the AAMVA Ad Hoc Committee Meeting held in Dallas, Texas on December 5-6, 1972.)

The IRP speaks of "reciprocity" both as to vehicles registered pursuant to it, as well as to those not so registered. (The Uniform Vehicles Registration Proration and Reciprocity Agreement, in contrast, speaks of "reciprocity" only in the latter instance. Article V of that agreement provides for "reciprocity" to vehicles not registered thereunder, but does not provide that proportionally registered vehicles are receiving "reciprocity".) *The IRP is, therefore, construed to be a "reciprocity agreement."* (See page 2, Minutes of the AAMVA Ad Hoc Committee meeting held in Washington, D.C., May 30-31, 1973.) *"Reciprocity Agreement" is not defined, but is construed to mean:*

An agreement, arrangement or understanding governing the reciprocal grant of rights and/or privileges to vehicles which are based in and properly registered under the applicable laws of the jurisdictions which are parties to such an agreement, arrangement or understanding.]

II—Definitions Applicable to This Agreement

A. "Apportionable Fee" means any periodic recurring fee required for licensing or registering vehicles, such as, but not limited to, registration fees, license or weight fees.

[*This provision describes the type of fees to be apportioned. The key words are "periodic" and "recurring." A registration, license or weight fee is*

only apportionable if it is a "periodic recurring" fee.]

B. "Apportionable Vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pick up and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and is used for the transportation of persons for hire or designed, used or maintained primarily for the transportation of property and:

1. is a power unit having a gross vehicle weight in excess of 26,000 pounds; or

2. is a power unit having three or more axles, regardless of weight; or

3. is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionately registered at the option of the registrant.

[*Fleets of vehicles are determined to be apportionable according to the characteristics and use of the vehicle or the "combination" of vehicles. Articles II.B.1. and II.B.2. refer solely to power units and are so construed. For purposes of Article II.B.2, an "axle" includes a so-called "dummy," "drag," "tag" or "pusher" type axle. Article II.B.3 refers to any vehicle (power unit or trailing unit) used within a combination which exceeds 26,000± gross vehicle weight. Trailers, however, are only apportioned under the Plan pursuant to an approved exception unless subject to Article XI.* (See Articles IV.C and XI.)

A vehicle or combination of vehicles falling within any of the three enumerated classifications is apportionable, if it is, a) used for the transportation of persons for hire, or, b) designed, used or maintained primarily (but not necessarily exclusively) for the transportation of property, and, c) ". . . used in two or more jurisdictions that allocate or proportionally register vehicles . . .

A vehicle or combination of vehicles which travels in two or more IRP jurisdictions, but which is not otherwise within the definition of "apportionable vehicle," may be proportionally registered if the registrant so chooses. Vehicles not proportionally registered are subject to registration and fee payment in accordance with each base jurisdiction's general registration statutes and may be entitled to reciprocity in other jurisdictions under applicable reciprocity agreements. (See Articles I.E. and XVIII and commentary thereudner; see also page 2, Minutes of the Kentucky Dam Village Meeting held September 27-28, 1972.)]

C. 1. "Base Jurisdiction" means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where mileage is accrued by the fleet and where operational records of such fleet are maintained or can be made available in accordance with the provisions of Article XIV, A(2).

[*This section provides a three-part test for the determination of base jurisdiction.* During the drafting of the Plan, this definition was revised several times. Originally, the "base jurisdiction" was the jurisdiction where the registrant, 1) had his principal place of business, and, 2) where the financial records of the firm as well as the records on vehicle operations were kept and could be inspected.

The definition was revised to delete the word "principal" and all reference to financial records. A re-

quirement that the fleet accrue mileage within the base jurisdiction was added. This definition was later amended by official ballot action to add the words "or can be made available in accordance with the provisions of Article XIV.A.2." after the term "maintained." (Final approval dated July 30, 1976.)

Prior to the passage of the Amendment a serious question arose regarding the need to maintain operational records of a fleet in the "base jurisdiction." As a matter of business practice many companies did not do so and considerable expense and time-consumption would have resulted from literal enforcement of that provision. Consequently, the administrators amended the Plan to allow the records to be maintained outside the "base." (See Article XIV.A.2. and Minutes, AAMVA Legal Affairs Subcommittee Meeting held in Houston and Austin, Texas, January 6-8, 1976.)

The fundamental principal of operational flexibility is again involved here. Industry representatives were concerned that a restrictive definition would reduce that flexibility. Administrators, on the other hand, were concerned that registrants might use the flexibility provided to avoid registration fees by choosing a base jurisdiction which does not claim "reciprocity miles."

It is not now, and never has been, the intent of the Plan to permit a registrant to use the flexible provisions of this section in changing his base jurisdiction as a device to avoid the payment of registration fees on a 100% mileage basis. (See commentary under Article II, Section G.) *The three-part test requires: 1) an established place of business, 2) fleet mileage accrual, and 3) maintenance of operational records or record availability under Article XIV.A.2.*

Although "an established place of business" is not defined, it is construed to mean:

> *". . . a psychical structure owned, leased or rented by the fleet registrant the location of which is designated by street number or road location, and which is open during normal business hours; and in which are located:*
>
> *1) a telephone or telephones publicly listed in the name of the fleet registrant,*
>
> *2) a person or persons conducting the fleet registrant's business, and,*
>
> *3) the operational records of the fleet (unless such records can be made available in accordance with the provisions of Article XIV.A.2.)"*

A question has arisen whether all vehicles of a fleet must accrue miles within the jurisdiction chosen as "base." If this interpretation were adopted, the registrant would be forced to make certain that every vehicle of a fleet travelled some of its miles in the "base" each year. This requirement would contravene the purpose of granting operational flexibility, discussed under Article 1.B. *The Plan is construed broadly to require only the accrual of miles by the fleet as a whole; each vehicle need not individually enter the base jurisdiction.*]

2. Registrants based in any jurisdiction not a member of this agreement, and who have been licensing vehicles in any member jurisdiction under basing point, allocation or proration, may declare the member jurisdiction where the most miles have been operated as a base jurisdiction for purposes of this agreement until such time as the registrant's base jurisdiction becomes a member of this agreement.

[*Registrants "based" in a non-member jurisdiction may obtain the benefits of Plan membership by initially declaring as a "base" the IRP member jurisdiction within which the most miles have been operated, without regard to the three-part test provided in Article II.C.1.* However, a question arises whether the "base" declaration must be changed upon membership approval of the previous "non-member." Because this provision authorizes such a declaration of "base" only ". . . until such time as the registrant's base jurisdiction becomes a member . . ." the implication is that the new member must become the new "base." However, this assumes that the registrant's bona fide "base" was and continues to be in the new member jurisdiction. Since the three-factor test for determining "base" is intended to provide a reasonable degree of flexibility to fleet operations, the registrant could decide to base his fleet (or fleets) in jurisdictions other than his former "base." *The Plan is construed to require a change in "base" only if the three-factor test is not met in the "declared base."* For example, assume:

(1) the registrant has historically operated fleet A from a place of business in jurisdiction X, a non-member of IRP; (2) fleet A accrues more of its mileage in IRP jurisdiction Y than in any other IRP jurisdiction but has no established place of business there; (3) fleet A declares jurisdiction Y as its base pursuant to this provision; (4) jurisdiction X then becomes an IRP member: The clear result is that the registrant must change its "base" to jurisdiction X. However, if the registrant has an established place of business in jurisdiction Y (or in any other IRP jurisdiction) when jurisdiction X becomes a member, the Plan does not require that the "base" declaration be changed to X. It is possible that the registrant will have closed his place of business in

X and, consequently, would be prohibited from declaring X as "base."]

3. Household Goods Carriers using equipment leased from service representatives may elect, with respect to such equipment, to base such equipment in the Base Jurisdiction of the service representative, or that of the carrier.

For equipment owned and operated by owner-operators, other than service representatives, and used exclusively to transport cargo for the household goods carrier, the equipment shall be registered by the carrier in the Base Jurisdiction of the carrier, but in both the owner-operator's name and that of the carrier as lessee, with the apportionment of fees according to the records of the carrier.

[See commentary on Articles IV.E and IX.]

D.1. "Base Plate" means the plate issued by the Base Jurisdiction and shall be the only registration identification plate issued for the vehicle by any member jurisdiction.

[See Article XVII.E.1]

2. Base plates shall be identified by having the word "Apportioned" and the jurisdiction's name on the plate. The numbering system and color shall be determined by the issuing jurisdiction.

E. "Commissioner" means the jurisdiction official in charge of registration of vehicles.

F. "Fleet" means one or more apportional vehicles.

G. "In-Jurisdiction Miles" means the total number of miles operated by a fleet of proportionally registered vehicles in a jurisdiction during the preceding year. In those cases where the registrant operated a fleet of proportionally registered vehicles in jurisdictions that require no apportionment and grant reciprocity, the base

jurisdiction may add such miles to the in-jurisdiction miles.

[The Plan does not define the term "reciprocity" in this context and Article II.K "reciprocity" does not apply since that provision deals with "reciprocity" granted by member jurisdictions only. However, the concept is one of vehicle operation in non-member jurisdictions at no licensing or registration cost to the registrant. *If a non-member jurisdiction requires the registrant to obtain a permit or permits and collects fees therefore or collects other fees in lieu of registration, it cannot be said that "reciprocity" is being granted. The term "in-jurisdiction miles" is construed to include only those miles actually travelled within a member jurisdiction and in the case of the base jurisdiction it may include those miles travelled in non-member jurisdictions which impose no fees for, or in lieu of, vehicle registration.*]

H. "Jurisdiction" means a state, territory or possession of the United States, the District of Columbia, or a state or province of a country.

I. "Operational Records" means documents supporting miles traveled in each jurisdiction and total miles traveled such as fuel reports, trip sheets and logs.

[*"Operational records" refers to source documents suitable for verification of fleet mileage, known as "Individual Vehicle Mileage Records" (IVMRs). An IVMR must contain the information set forth in the Uniform Operational Audit Procedure Guidelines which are herein incorporated by reference.* (See commentary under Article XIII and XIV.)]

J. "Preceding Year" means the period of twelve consecutive months immediately prior to July 1st of the year immediately preceding the commencement of the registration or license year for which proportional registration is sought.

K. "Reciprocity" means that an apportionable vehicle properly registered hereunder shall be exempt from further registration by any other member jurisdiction.

[See Articles I.A. and I.E.]

L. "Recreational Vehicle" as used in this agreement is one used for personal pleasure or travel by an individual or his family.

[*The term "recreational vehicle" refers to vehicles such as "campers," "house trailers," "motor homes" and "mobile homes" when used exclusively for personal pleasure and travel by an individual and his family. In order to qualify as a "recreational vehicle," it must not be used in connection with any business endeavor* (see page 3, Minutes of the AAMVA Ad Hoc Committee Meeting held in Washington, D.C., May 30-31, 1973). *When a recreational vehicle is being transported by a vehicle transporter, its weight must be included in the gross vehicle or combination weight of the transporting vehicle or combination of vehicles for purposes of determining appropriate registration fees. This requirement is clear since it is the registration of the vehicle transporter which is being considered here and the nature of the property transported is irrelevant.* (See Article II.B.3.)]

M. "Registrant" means a person, firm or corporation in whose name or names a vehicle is properly registered.

[*The term "registrant" is defined broadly so as not to exclude service representatives and rental companies from the classification.* (See commentary under Articles IV.E. and XI.)]

N. "Registration Year" means the twelve month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction.

O. "Restricted Plate" means one that has time (less than a registration year), geographic area, mileage or commodity restriction.

P. "Service Representative" means one who furnishes facilities and services including sales, warehousing, motorized equipment and drivers under contract or other arrangements to a carrier for transportation of property by a household goods carrier.

Q. "Total Miles" means the total number of miles operated by a fleet of proportionally registered vehicles in all jurisdictions during the preceding year.

[*"Total miles" means miles traveled by a fleet in all jurisdictions during the preceding year. This provision is not construed so as to limit "total miles" to miles traveled in member jurisdictions.*]

R. "Chartered Party" means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, lawfully on file with the Interstate Commerce Commission, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.

[This definition was added by amendment effective January 1, 1975, and was made necessary by the amendment to Article II.A. excluding "buses used in transportation of chartered parties" from the definition of an "apportionable vehicle."]

III—Fees for Proportional Registration

A. The registration fee for apportionable vehicles shall be determined as follows:

1. Divide the in-jurisdiction miles by total miles generated during the preceding year.

2. Determine the total fees required under the laws of each jurisdiction for full registration of each vehicle at the regular annual or applicable fees, or for the unexpired portion of the registration year.

3. Multiply the sum obtained under Paragraph 2 of this section by the quotient obtained under Paragraph 1 of this section.

[See Articles II.G., II.Q. and commentary thereunder.)]

B. This agreement does not waive any fees or taxes charged or levied by any jurisdiction in connection with the ownership or operations of vehicles other than the apportionable fees are defined herein. All other fees and taxes shall be paid to each jurisdiction in accordance with the laws thereof.

[This section authorized the collection of all fees and taxes which are not "apportionable fees" as defined in Article II.A. *Whether a "fee" or a "tax" is involved, it may only be collected "in accordance with the laws" of the jurisdiction imposing the fee or tax. The fee or tax must be set or authorized by statute. A proliferation of such fees or taxes, however, may result in impeding the free movement of commerce among the member jurisdictions. This result would tend to contravene the purpose set forth in Article I.B.* (see commentary thereunder).]

IV—Application for Proportional Registration

A.1. An applicant for proportional registration shall file a uniform application with the Commissioner of the base jurisdiction in lieu of registration under other applicable statutes.

[*This section requires the filing of a uniform application with the Commissioner of the base jurisdiction. The application form adopted for use shall be used by all member jurisdictions and is hereby incorporated by reference.* (Forms for this purpose were developed by the American National Standards Institute D19.4 Subcommittee on Uniform Documents and Record, approved as to form in July 1975; see page 10, Minutes of the AAMVA IRP Procedures Conference held in Jackson, Mississippi, July 22-24, 1975.)]

2. Whenever the base jurisdiction of a registrant changes as a result of the conditions described in Article II.C.2., the re-registration of the registrant in the new jurisdiction shall be accomplished through orderly and equitable procedures to be established by the Commissioners of the two jurisdictions involved.

[*This section requires the establishment of orderly and equitable procedures by the Commissioners of the jurisdictions involved in a change of "base" under Article II.C.2. conditions. This provision for the ad hoc development of procedures to effect the "base" change. If such procedures result in the duplication of registration fee payment, they are deemed not to be "equitable" and, therefore, shall not be authorized under this section.*]

B. Applications for proportional registration shall be filed on a date as determined by the base jurisdiction. Every application for proportional registration shall, at the time and in the manner required by the Commissioner, be supported by the payment of the registration

fees in the amount determined in Article III, provided, however, the Commissioner may, by regulation, postpone payment of fees until after the Commissioner has computed the fees due.

[This section allows the base jurisdiction to determine the date by which applications must be filed, since the base (with a few exceptions) is the only jurisdiction involved in the filing of applications. This provision also authorizes the Commissioner to postpone or delay payment of fees "until after the Commissioner has computed the fees due." This option avoids duplicate effort in those cases where the registrant might have made an error in fee calculation. Such procedures must be established by regulation under the Plan's explicit terms and should provide notice of the due date of the application and other pertinent requirements.]

C. The applicant for proportional registration of trailers, semi-trailers, and auxiliary axles shall use the application form for such vehicles and the apportionment of registration fees shall be computed by using the same factor determined by in-jurisdiction and total miles in Article III and this shall be applied to the registration fee. Jurisdictions may waive trailer, semi-trailer and auxiliary axle apportionment. Jurisdictions requiring proportional registration of trailers, semi-trailers and auxiliary axles shall provide for such requirement by filing an exception as described in Article XVII.

[*This section allows for the proportional registration of "trailers, semi-trailers and auxiliary axles" pursuant to an approved exception. The Plan does not define the terms "axle," "auxiliary axles," "semi-trailers" or "trailers." These terms are construed to mean:*

Axle—An assembly of a vehicle consisting of two or more wheels whose centers are in one

horizontal plane, by means of which a portion of the weight of a vehicle and its load, if any, is continually transmitted to roadway. For purposes of registration under the IRP, an "axle" is any such assembly whether or not it is load-bearing only part of the time. For example, a single-unit truck with a steering axle and two axles in a rear-axle assembly is an apportionable vehicle even though one of the rear axles is a so-called "dummy," "drag," "tag" or "pusher" type axle.

Auxiliary Axles—An auxiliary undercarriage assembly with a fifth wheel and tow bar used to convert a semi-trailer to a full trailer.

Semi-Trailer—Every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.

Trailers—Every vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

The drafters were cognizant of the American Association of Motor Vehicle Administrators' (AAMVA) policy encouraging the adoption by all jurisdictions of a license or registration fee system in which the major portion of the fee would be on the power unit (the so-called "power-unit licensing system"). Consequently, this Article requires jurisdictions applying for membership to file an exception under Article XVII if trailers, semi-trailers and/or auxiliary axles are to be proportionally registered. However, a question arises as to whether such an exception should

require approval of all current members. A jurisdiction's exception on this item should receive approval unless the fees applicable to trailers, semi-trailers and/or auxiliary axles are not based on a split-fee registration system under which they are payable in full to the base jurisdiction with no apportionment to other apportionment to other jurisdictions. If a jurisdiction has a true "split-fee" registration system—wherein the method of fee determination for non-power units is the same as or substantially similar to the method applicable to power units—its membership should not be delayed or denied in an effort to force it to adopt a "power-unit licensing system." (See page 6, Minutes of the AAMVA Ad Hoc Committee Meeting held in St. Louis, Missouri, October 15-16, 1973).]

D.1. The application shall contain the number of power units, number of trailers, semi-trailers and auxiliary axles, with such vehicle description as may be required by the jurisdictions concerned and a uniform mileage schedule.

[This section recognizes the fact that some jurisdictions may need a more detailed vehicle description than others, although the form must be uniform. This problem was solved by providing enough columns in the application form to satisfy all requirements in all jurisdictions. Consequently, although one jurisdiction may need descriptive detail not needed by another, the format of the application form remains uniform.]

2. The base jurisdiction, after receiving its proportionate fees shall supply the necessary identification plates and prepare cab cards, listing on the front of the cab cards the jurisdictions where the vehicles are proportionally registered, the weight for which registered and other necessary information in each of the jurisdictions.

The base jurisdiction may, in its discretion, withhold issuing plates and cards until it has received evidence of payment due other member jurisdictions.

[Sections D.2 and D.3 set forth the vital base jurisdiction responsibilities essential to the proper functioning of the Plan. Only the base jurisdiction issues the "identification plate" and "cab card." No exception to this principle may be taken (see Article XVII). The weight for which the vehicle is registered must be listed on the face of the registration card so that enforcement personnel can know whether a vehicle is operating in excess of its registered weight. It should be noted, of course, that even though a vehicle is properly registered in its base jurisdiction with regard to declared gross weight, it must also comply with existing weight laws or regulations in other jurisdictions into or through which it is expected to operate.

For example, the payment of registration fees in jurisdiction X at a declared gross combination weight (GCW) of 80,000# does not authorize the operation of that vehicle at 80,000# in jurisdiction Y whose legal weight limit is lower (although in some instances "overweight permits" may be obtainable).

The term "and other necessary information" in Article IV.D.2. refers to that information required by registration and licensing statutes and is not construed to require unrelated information (fuel use tax account numbers, PUC/PSC authority, axle mile tax account numbers, etc.).

The base jurisdiction has the option of withholding identification indicia until it has evidence of fee payment to all other member jurisdictions (Article IV. D.2.). The purpose of this option is to allow withholding the privilege of vehicle operation under ap-

portionment until all IRP jurisdictions have received appropriate fee payment.]

3. The base jurisdiction shall notify the other declared jurisdictions that a proportional registration application has been filed, and shall furnish the declared jurisdiction a uniform mileage schedule.

[This section imposes an obligation on the base jurisdiction to notify the other members that an application has been filed and to forward each jurisdiction a copy of the Uniform Mileage Schedule. ("Uniform Mileage Schedule" refers to Schedule B.)]

4. All plates and cards and reciprocal exemptions are subject to cancellation and revocation in the event of erroneous issuance thereof, or if any fees remain unpaid.

[This section grants the base jurisdiction the power to cancel or revoke "all plates and cards and reciprocal exemptions" if erroneously issued ". . . . or if any fees remain unpaid." *The intent of this provision is clear—the failure to pay one jurisdiction's fees may lead to inability to operate in any jurisdiction.* This power is not to be used lightly, but is necessary to practical and equitable operation under the Plan. (See Articles XIII, XIV and commentary thereunder.)]

5. The base jurisdiction shall cooperate with other declared jurisdictions in connection with applications and fees paid.

[This section requires the base jurisdiction to "cooperate" with other members ". . . in connection with applications and fees paid." *This provision is construed, in part, to require the base jurisdiction to assist another member in the collection of fees due if a registrant fails to pay such fees*].

E. In those cases where Household Goods Carrier equipment is elected to be registered in the base juris-

diction of the service representative, the equipment shall be registered in said service representative's name and that of the carrier as lessee with the apportionment of fees according to the combined records of the service representative and those of the carrier, and such records must be kept or made available in the service representative's base jurisdiction.

If the election is the base jurisdiction of the carrier, and such jurisdiction is a member jurisdiction, the equipment shall be registered by and in the name of the carrier and that of the service representative as lessor with the apportionment of fees according to the records of the carrier and the service representative which must include intrastate miles operated by those vehicles applicable under this agreement, and the records must be kept or made available in the base jurisdiction of the carrier. Service representatives properly registered under this election shall be fully registered for operations under their own authority as well as under the authority of the carrier.

[This section sets forth procedures applicable to household goods carriers' operations. *The names of both the lessee-carrier and lessor-service representative (or vehicle owner) must be shown since the equipment is operated on an intermittent basis under the lessee-carrier's interstate operating authority, pursuant to Interstate Commerce Commission regulations, and the lessor-service representative's local and/or intrajurisdictional operating authority pursuant to regulations promulgated by a state or province. Intrajurisdictional mileage records are maintained by the lessor-service representative and interjurisdictional mileage records are maintained by the lessee-carrier and furnished to the lessor-service representative.*

Mileage records must be maintained or made available in the jurisdiction selected as the base jurisdiction, which must be that of the service representative or carrier. (See Article II.C.3. power of election.)]

V—Registration of Apportionable Vehicles

A. The Commissioner of the base jurisdiction shall register apportionable vehicles upon application and payment of the registration fees as provided in Articles III and IV. Payment of additional fees for each vehicle so registered may be required by the Commissioner of the base jurisdiction, in an amount provided by statute or regulation of the base jurisdiction for issuance of a plate. A registration card shall be issued for each vehicle registered by the Commission of the base jurisdiction and the card shall appropriately identify the vehicle for which it is issued, list the jurisdictions in which the vehicle has been apportioned, the weight and classification of fee for which registered according to the applications and payments furnished by the applicant. Such registration card shall be carried in or upon the vehicle, for which it has been issued, at all times.

[*Only the base jurisdiction may charge a fee for the issuance of an identification (license) plate, which is in addition to the proportional registration fee determined under Article III.A., since only the base jurisdiction may issue such a plate.* (See Articles I.C., IV.D.2. and commentary thereunder, and Article XVII.E.1). *Any such fee must be established by statute or legally valid regulation in order to be an authorized fee under the Plan.* (See page 7, Minutes of the AAMVA Ad Hoc Committee Meeting held in Phoenix, Arizona, July 24-25, 1973.)

Only the base jurisdiction may issue a registration (cab) card, which must identify the vehicle for which it is issued, identify the jurisdictions into and through which the vehicle may operate and show the weight

and classification of fee for which the vehicle is registered.]

B. Vehicles registered as provided in Section A of this Article shall be deemed fully registered in all jurisdictions where proportionally registered for any type of movement or operation provided the registrant has proper interstate or intrastate authority from the appropriate regulatory agency or is exempt from regulation by the regulatory agency.

[*Vehicles registered as provided in Section A are fully registered for any type of movement or operation, provided appropriate regulatory authority is held, if necessary. Since some jurisdictions' statutes require the payment of full registration fees in the event a vehicle is to be operated intrajurisdictionally (vehicle movement point to point within a single jurisdiction), it was believed necessary to add a provision indicating that proportionally registered vehicles are "deemed fully registered" even though full fees have not been paid. This provision should be construed in light of its purpose, i.e., to make intrajurisdictional operations possible with only a proportional payment of fees. This provision should not be construed so as to cause the imposition of other fees and taxes (state, federal or provincial) not otherwise applicable under statute. It should be noted in this connection that the IRP is a "reciprocity agreement," as discussed in the commentary on Article I.E.—Vehicles proportionally registered pursuant to the IRP are receiving "reciprocity" and are exempt from "further registration . . ."* (See Article II.K. and commentary thereunder.)].

C. There shall be no minimum vehicle fees for any apportionable vehicle, except those statutory fees for issuance of identifications or filing of applications.

[It was the intention of the drafters of the Plan to authorize only those "minimum vehicle fees" set by

statute for issuance of identification by the base jurisdiction or for filing of application with the base jurisdiction. Although this intention is not entirely clear from the Minutes of the final AAMVA Ad Hoc Committee Meeting held in Phoenix, July 24-25, 1973, it may be discerned from a reading of all meeting minutes wherein this subject is discussed. Since one of the fundamental purposes of the Plan is to provide for the processing of applications and issuance of identification by the base jurisdiction only, it would be incongruous to authorize the collection of fees for those responsibilities by other than the base jurisdiction. *This provision is construed to authorize the imposition of such "minimum vehicle fees" by the base jurisdiction only. Such fees must be set by statute to comply with the Plan's intent.*]

D. Registrants shall register all owner-operator vehicles on the basis of the registrant's (lessee's) mileage figures for the preceding year.

VI.—Registration of Additional Fleet Vehicles

A. Vehicles acquired by the registrant after the commencement of the registration year and added to the proportionally registered fleet shall be registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicles for the remainder of the registration year.

B. All applications for additional fleet vehicles shall be filed and processed in the same manner as the original application.

VII—Withdrawal of Fleet Vehicles, Credits, Replacement Vehicles and Accounting

A. If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the registrant of such fleet shall so notify the

Commissioner on appropriate forms provided by the Commissioner. The Commissioner shall require the registrant to surrender the cab card and identification plates to the base jurisdiction with respect to any such vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service of the registrant, the unused portion of the fees paid with respect to such vehicle, where permitted by statute, shall be refunded by each jurisdiction or be applied against liability of such registrant for subsequent additions to such fleet during such registration year or for additional fees upon audit.

[*This section requires the granting of refunds or "credits" by each jurisdiction (if authorized by statute) if a vehicle is "permanently withdrawn" from a proportionally registered fleet.* "Permanently withdrawn" includes destruction, sale or other complete removal from the registrant's fleet. The term "where permitted by statute" was included in recognition of the fact that some jurisdictions were not statutorily authorized to grant refunds or allow credits. Original language would have granted the registrant an "election" to determine whether he wanted a refund or credit. This provision was later revised to delete the reference to an "election," thus, in effect, allowing the jurisdiction to determine whether a refund or credit is appropriate. (See page 7, Minutes of the AAMVA Ad Hoc Committee Meeting held in Phoenix, Arizona, July 24-25, 1973, and attachments.)]

B. If the registrant is replacing a vehicle for one withdrawn from the fleet and such vehicle is of the same weight category as that replaced, the registrant shall file a supplemental application with the base jurisdiction. The base jurisdiction shall in accordance with provisions in Article VI.B, issue a new cab card and transfer the identification plates to the new vehicle. When a replaced vehicle is of a greater weight or requires a larger registration fee, the registrant shall file the re-registration with the base jurisdiction in the manner set forth in Article VI for the registration of additional fleet vehicles.

[This section provides that the registrant must file the re-registration with the base jurisdiction pursuant to Article VI ". . . when a replaced vehicle is of greater weight or requires a larger registration fee. . . ." *The term "replaced vehicle" is construed to mean "replacement vehicle."*]

VIII—New Operations

This Article authorizes the registrant to estimate anticipated mileage for the upcoming license year if no mileage history exists because "new operations" are contemplated.

The registrant ". . . shall determine the in-jurisdiction and total mileage to be used . . ." but the base jurisdiction Commissioner is authorized to ". . . adjust the estimate . . . if . . . not satisfied with its correctness." Early drafts of the IRP provided that adjustments made by the Commissioner ". . . shall not increase the registrant's total proportional factor above 100%." This limitation on the Commissioner's authority was removed by deleting the reference to it on the ground that the base jurisdiction ". . . may at times be compelled to increase the registration to over 100% on adjustment of proportional estimate" due to statutory mandate. (See page 7-8, Minutes of the AAMVA Ad Hoc Committee Meeting held in Phoenix, Arizona, July 24-25, 1973.)]

Initial application for proportional registration shall state the mileage data in all jurisdictions for the preceding year with respect to such vehicle or vehicles. If no operations were conducted with such vehicle or vehicles

during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in each of the jurisdictions. The registrant shall determine the in-jurisdiction and total mileage to be used in computing the proportional registration fee for the vehicle or vehicles. The base jurisdiction Commissioner may adjust the estimate in the application if the base jurisdiction Commissioner is not satisfied with its correctness.

IX—Registration of Owner-Operator Vehicles

[This Article sets forth procedures specifically and solely applicable to vehicles leased by owner-operators to motor carriers on a long-term basis. The Plan does not define the terms "long-term" or "owner-operator." *As used in this article, these terms are construed to mean:*

Long Term—Any period of time exceeding 29 consecutive days.

Owner-Operator—An equipment lessor who leases his vehicular equipment with a driver to a for hire carrier pursuant to ICC regulations (49 CFR 1057) or similar regulations of a jurisdiction's regulatory body.]

A. Proportional registration for owner-operators who lease their vehicles to motor carriers on a long term basis shall be accomplished as follows:

1. The lessee shall be the registrant and the vehicle shall be registered by the carrier, but in both the owner-operator's name and that of the carrier as lessee, with the allocations of fees according to the records of the carrier.

2. The identification plates and cab card shall be the property of the lessee.

[*Under this section, the lessee-carrier is the owner of the identification plates and registration (cab) cards and, consequently, is responsible for their surrender under Article VII.A.*]

3. Should an owner-operator leave the fleet of the lessee, the lessee may proceed in accordance with Article VII.

[*This section authorizes the lessee-carrier to apply for a refund or credit under Article VII.A. if the vehicle will not be replaced by another, or to obtain new vehicle indicia for the replacement vehicle pursuant to Article VII.B. Under the provisions of the Plan the owner-operator is unable to obtain a refund directly from the member jurisdictions.*]

B. Vehicles of owner-operators that are not proportionally registered or not fully registered in a jurisdiction having a separate reciprocity agreement with the jurisdiction in which the vehicle is being operated shall be subject to the trip permit requirement as set forth in Article XII.

C. Each jurisdiction shall provide means of registration for owner-operators not operating as a lessor. Such registration shall be a restricted plate or permit issued for a minimum fee and for a registered gross weight not in excess of the empty weight of the vehicle.

[*This section requires each jurisdiction to develop a method by which an owner-operator can move his empty vehicle from one lessee-carrier fleet to another without violating general registration statutes, thereby avoiding unwarranted statutory penalties which might otherwise apply.* (See Article II.C.3. and V.D.)]

X—Trip Leasing

[This article provides special procedures applicable to "trip leasing" not to be confused with trip permit

registration, covered under Article XII. *"Trip Lease" is not defined in the Plan, but is construed to mean:*

> *A lease of vehicular equipment to a common or contract carrier (lessee) for a single movement by either (a) another common or contract carrier for transportation in the direction of a point which the lessor carrier is authorized to serve or (b) a carrier of exempt commodities, as defined in the Interstate Commerce Act, for transportation in the general direction of the general area in which the vehicle is based. The term may also include a similar movement intrastate where such movement is authorized under the laws of the jurisdiction.*

This provision was originally recommended for inclusion by the household goods carrier at the February 1972 Tampa Bay, Florida meeting to facilitate procedures for handling trip leasing in interstate commerce under ICC regulations with the primary registration responsibility placed on the lessee carrier. During the September 1972 Kentucky Dam Village meeting, the last sentence was modified to clarify that the service representative (see Article II.C.) has the same responsibilities. The major revision to this Article occurred at the AAMVA Ad Hoc Committee meeting held in Washington, D.C., May 30-31, 1973, when the registration and reporting burden was shifted from the lessee to the lessor in trip leasing situations involving two apportioned fleet operators. (See Minutes, page 4.) This revision recognized trip leasing practice, under which, in the vast majority of cases, the lessor is responsible for operational costs incurred under the lease.

Under a trip lease between an apportioned carrier and a non-apportioned carrier when a trip permit is not required, the miles so operated shall accrue

to the lessee carrier; if a trip permit is required, no miles will accrue to the lessee carrier.]

The lessee, except as provided for service representatives in Article II.C., is responsible for the proper registration of the vehicle. Except that an apportioned operator may lease equipment to another apportioned fleet operator and the lessor shall be responsible for reporting on the proportional application the miles traveled by the leased equipment. The lessee shall be the person using and operating the equipment by the lease agreement. The leased vehicle must bear proportional credentials and be operated only in the jurisdictions to which fees have been paid or a trip permit will be required. The service representative in Article II.C. shall have the same responsibility for qualifying his vehicles.

XI—Registration of Rental Vehicles

[This article sets forth procedures specifically and solely applicable to persons or firms engaged in the business of renting and/or leasing fleets of vehicles without drivers. A "rental fleet" must be designated as such by the "rental owner" and must include five or more "rental vehicles."

The intention of the IRP drafters in the adoption of this article was to allow, but not require, the owner of a rental fleet to be the "registrant" (see Article II.M.) of such fleet vehicles whether rented or leased. The Minutes (page 6) of the IRP Signators Meeting held in St. Louis, Missouri, October 15-16, 1973, indicate as follows:

> The next subject discussed concerned the proportional registration of rental fleets. In general, all vehicles that are leased by a registrant shall be proportionally registered in the name of the carrier. However, it was agreed that in the case of vehicles that are part of a rental

fleet, such vehicles *may be* proportionally registered in the name of the rental company as part of the rental fleet even though such vehicles may be under long term lease to an individual apportioned carrier. In such cases, the cab card may show to whom the vehicle is leased. (Emphasis added.)]

A. Definitions applicable to this Article are:

1. "Rental Owner" means an owner principally engaged, with respect to one or more rental fleets, in renting to others or offering for rental the vehicles of such fleets, without drivers.

2 "Rental Fleet" means five or more vehicles which are rented or offered for rental without drivers, and which are designated by a rental owner as a rental fleet.

3. "Rental Vehicle" means a vehicle of a rental fleet.

4. "Renting and Leasing" means the giving of possession and control of a vehicle for valuable consideration for a specific period of time.

[This section defines "renting and leasing" synonymously, making no reference to time limitations. Early drafts defined "renting" to mean "the giving of possession of a vehicle for consideration for a period 364 consecutive days or less." Because the 364 day limitation would unduly limit the registrant's fleet flexibility, that requirement was deleted. The definition was amended further to add the term "and leasing" following the term "renting," eliminating any distinction between the two terms for registration purposes under Article XI. (See pages 6-7, Minutes of the AAMVA Ad Hoc Committee Meeting held in Washington, D.C., May 30-31, 1973; see also page 32, Minutes of the 39th Annual International Conference held in New York, New York, September 19-23, 1971—attached to those minutes is a resolution recognizing the need for special treatment of "rental fleets" to ". . . achieve reciprocity among jurisdictions needed for service to the public and for efficient operation of rental vehicles.")]

5. "A Rental Transaction" for the rental of a vehicle shall be deemed to occur in the jurisdiction where such vehicle first comes into possession of the user.

B. Rental fleets owned by any person or firm engaging in the business of renting such vehicle, shall be extended full interstate and intrastate privileges, provided that:

[*A "rental owner" of a "rental fleet" in the business of "renting" and/or "leasing" apportionable vehicles without drivers in two or more member jurisdictions may register such vehicles in his own name.*]

1. Such vehicles are part of a rental fleet which are identifiable as being a part of such fleet; and

2. Such person or firm has received approval from the jurisdiction to apportion such rental fleet; and

3. Such person or firm registers the vehicles as described below:

a. Trucks and Truck-Tractors. In accordance with Articles III, IV, V, VI and VII of this agreement.

[*Trucks and truck-tractors not otherwise under this section* (see Article XI.B.3.e) *may be registered in the name of any person or firm engaged in the business of renting or leasing rental vehicles which are part of a rental fleet. These vehicles are subject to apportionment pursuant to the definition in Article II.B. and are to be registered in accordance with basic Plan procedures, as distinguished from procedures set forth in Article XI.B.3.e.*]

b. Rental Passenger Cars. Divide the gross revenue received in the preceding year for use of such rental vehicles arising from passenger car rental transactions occurring in the jurisdiction by the total gross revenue received in the preceding year for the use of such rental vehicles arising from passenger car rental transactions occurring in all jurisdictions in which such vehicles are operated. The resulting percentage shall be applied to the total number of passenger cars in the fleet and that figure shall be the number of rental passenger cars that shall be fully registered in the jurisdiction.

[This section requires the use of revenue, rather than miles, in determination of the quotient to be used in registering rental passenger cars. This revenue quotient approach was agreed by the drafters to be the only feasible method of determining the total number of rental passenger cars to be fully registered in each jurisdiction. Note that revenue is attributable to a jurisdiction if it arises from "rental transactions occurring in the jurisdiction." (Deemed to be where the vehicle first comes into possesion of the user; see Article XI.A.5.)]

c. Trailers and Semi-Trailers. Trailers and semi-trailers not in separate pool fleets and used in normal tractor trailer operations shall be licensed according to Article IV.C. Where required, trailers and semi-trailers, over 6,000 pounds gross vehicle weight and used solely in pool fleets shall be licensed as follows:

Divide the gross revenue received in the preceding year for the use of such rental vehicles arising from rental transactions occurring in the jurisdiction by the total gross revenue received in the preceding year for the use of such rental vehicles arising from rental transactions in all jurisdictions. The resulting percentage shall be applied to the number of units in such fleet.

[*Paragraph one requires that trailers and semi-trailers operating in rental fleets of trucks and truck*

tractors be registered in accordance with Article IV.C. (see Article XI.B.3.a.). *These vehicles, therefore, may be registered in the name of the rental owner, under basic Plan procedures.*

Paragraph two requires the use of revenue figures in the determination of the number of "pool" trailers or semi-trailers to be fully licensed. This provision fails to indicate that the application of the percentage factor to total fleet units determines the number of vehicles to be "fully registered" (see Article XI.B.3.b.) *or "fully plated"* (see Article XI.B.3.e).]

d. Utility Trailers. Utility Trailers, 6,000 pounds gross vehicle weight and under, every owner of utility trailers engaged in the business of renting such trailers for use in a jurisdiction shall register a number of trailers equal to the average number of such trailers rented in or through the jurisdiction during the preceding year.

[This section provides for the registration of utility trailers, which are trailers not exceeding 6,000# GVW. The Plan provides that the number of trailers to be registered shall equal the "average number of such trailers rented in or through the jurisdiction during the preceding year." This method of registration was selected because it was currently being used by most jurisdictions and, after careful consideration, was determined to be the most equitable and feasible approach.]

e. One-Way vehicle. Trucks of less than 26,000 pounds gross vehicle weight operated as a part of an identifiable one-way fleet will allocate vehicles to the respective jurisdictions based on the mileage factor procedure in Article III and fully plate said allocated vehicles in such jurisdiction. All trucks of such one-way fleet so qualified will be allowed to perform both interstate and intrastate movements in all jurisdictions.

[Provides for "vehicle allocation" of vehicles described as "one way vehicles." Such vehicles are those which are rented in one place and generally left in another. Such vehicles are to be "allocated" to each "respective jurisdiction."

In this section, an "allocated vehicle" is one to which a particular jurisdiction's basic registration plate is attached upon payment of that jurisdiction's full basic registration fee. A portion of each fleet of one way vehicles is "allocated" to each jurisdiction into or through which the fleet travels (each vehicle of the fleet need not enter every jurisdiction.) The mileage quotient procedure of Article III.A.1. is used to determine the number of vehicles allocated to each jurisdiction.

For example: Assume (1) Fleet A consisted of fifty vehicles; (2) the fleet traveled 1,000,000 total miles during the preceding year in ten jurisdictions; (3) 100,000 of those miles were traveled in jurisdiction X. Based on these assumptions, 10% of the fleet mileage was accrued in X and, consequently, five vehicles (10% x 50) should be allocated to and "fully plated" in X.

All trucks of an identifiable one way fleet (identified by visible markings) "so qualified" (allocated and fully plated) are to be authorized to perform both interstate and intrastate movements in IRP jurisdictions, even those identified with the registration plate of a non-IRP jurisdiction.]

XII—Trip Permit Registration

A. Trip permit registration may be issued for any vehicle or combination of vehicles which could be lawfully operated in the jurisdiction if full registration or proportional registration were obtained.

[*This section authorized the issuance of "trip permits" in lieu of either "full" or "proportional" registration. It is clear that the drafters' intent was to provide for an optional alternative, available to the registrant at his elecion.*]

B. A person desiring a trip permit registration shall make application therefore on forms provided by the Commissioner. Every such application shall be accompanied by the required fee. Every trip permit shall be carried in the cab of the vehicle for which such permit is issued.

C. Any vehicle or combination of vehicles for which a trip permit has been issued may be operated in interstate or intrastate commerce in the jurisdiction for the period allowed under such permit.

[This section sets forth a fundamental Plan concept that vehicles operating under trip permit ". . . may be operated in interstate or intrastate commerce in the jurisdiction for the period allowed under such permit." The minutes (page 8) of the AAMVA Ad Hoc Committee meeting held in Phoenix, July 24-25, 1973 indicate:

> The intention in the original document was to give the trip permit the same standing as a full proportional registration. Many times the trip permits allow only interstate movement, and if prorated it would allow both interstate and intrastate movement.

This section is construed to mean:

> *Any vehicle or combination of vehicles for which a trip permit has been issued may be operated interstate or intrastate in the jurisdiction for the period allowed under such permit.*

The drafters recognized that they should concern themselves with interstate and intrastate "move-

ments" only (whether such movements are in interstate or intrastate commerce is a regulatory issue: see Articles V.B., XI.B., XI.B.3.e. and XVII.E. and commentary thereunder).

The terms "interstate" and "intrastate" are not defined in the Plan, but are construed to mean:

Interstate—Vehicle movement between or through two or more jurisdictions.

Intrastate—Vehicle movement from one point within a jurisdiction to another point within the same jurisdiction.

Miles operated by an apportioned carrier under a trip shall accrue to the carrier.]

D. Trip permits shall not be used to evade or circumvent this agreement.

E. Jurisdictions, members to this agreement, may provide a system of issuing trip permits for other jurisdictions, members of this agreement, so that vehicles may move without waiting for telegraphic or other emergency authorization. The issuing jurisdiction shall collect the necessary trip permit fee and forward it to the jurisdiction for which the permit was issued and deliver to the registrant the permit for movement in the other jurisdiction or jurisdictions.

XIII—Preservation of Records and Audit

A. Any registrant whose application for proportional registration has been accepted shall preserve the records on which it is based for a period of the three preceding years. Such records shall be made available to the Commissioner at this request for audit as to accuracy of computation, payments, and assessments for deficiencies or allowances for credits, during the normal business hours of the day.

[This section requires the preservation of "operational records" supporting the application for a period of the ". . . . three preceding years." "*Preceding year" means the "twelve consecutive months immediately prior to July 1st of the year immediately preceding the commencement of the registration or license year for which proportional registration is sought.*" (See Article II.J.) *Records must be maintained through July of the fourth prior year for each registration year in question since the "preceding year" or mileage year actually includes part of two calendar years.*

Insofar as the Uniform Operational Audit Procedure Guidelines approved by the IRP jurisdictions (as amended 1981) set forth procedures applicable to the preservation of records sufficient for a determination of true liability, they are hereby incorporated by reference.]

B. If any registrant fails to make records available to the Commissioner upon proper request or if any registrant fails to maintain records from which his true liability may be determined, the Commissioner may, thirty days after written demand for an availability of records or notification of insufficient records, impose an assessment of liability based on the Commissioner's estimate of the true liability of such registrant as determined from information furnished by the registrant, information gathered by the Commissioner at his own instance, information available to the Commissioner concerning operations by similar registrants and such other pertinent information as may be available to the Commissioner.

XIV—Audits

[*Insofar as the Uniform Operational Audit Procedure Guidelines approved by the IRP jurisdictions (as amended 1981) set forth procedures required*

under audit, they are hereby incorporated by reference.]

A.1. The base jurisdiction shall audit the registrants displaying a base plate of the base jurisdiction as to authenticity of mileage figures derived from operational records and registrations and at such time and frequency as determined by the base jurisdiction.

2. In the event that the registrant's operational records are not located in the base jurisdiction and it becomes necessary for the base jurisdiction to send auditors to the place where such records are normally kept, the base jurisdiction may require the registrant to reimburse the base jurisdiction for per diem and travel expense of its auditors incurred in the performance of such audit.

B. Upon completion of any such audit, the Commissioner shall notify all jurisdictions in which the registrant was proportionally registered on the accuracy of the records of such registrant. Should the registrant have miscalculated the fees due any jurisdiction in which his vehicles were proportionally registered, such information shall be furnished to the jurisdictions for adjustment.

C. Audits may be made by the Commissioners of the several jurisdictions.

XV—Assessment Claims Under Audit

[*Insofar as the Uniform Operational Audit Procedure guidelines approved by the IRP jurisdictions (as amended 1981) set forth procedures required for assessment for deficiencies and claims for credit or refund, they are hereby incorporated by reference.*]

A. Upon audit, the Commissioner shall assess for any deficiency found to be due. No assessment for deficiency or claim for credit may be made for any period for which records are no longer required.

B. Assessments based on audit, interest on assessments, refunds, or credits or any other amounts including auditor's per diem and travel shall be made in accordance with the statute of each jurisdiction involved with the audit of a registrant.

XVI—Entry and Withdrawal

A. Any jurisdiction may become a party to this agreement by executing the prescribed adopting resolution and sending it to the American Association of Motor Vehicle Administrators (hereinafter referred to as AAMVA) in Washington, D.C.; however, such resolution must be approved and endorsed by all member jurisdictions using procedures contained in Article XIX.

B. This agreement shall continue in full force and effect, after its original adoption, as to each jurisdiction until cancelled or revoked by proper officials of any jurisdiction upon thirty days written notice to AAMVA who shall immediately notify the officials of the other member jurisdictions of this agreement. However, cancellation by one jurisdiction shall not effect the agreement as between other jurisdictions. All credentials issued under this agreement shall be valid until the end of the current registration year of the applicable jurisdiction.

XVII—Exceptions

A. Each signatory jurisdiction to this agreement shall list its exceptions, if any. These exceptions will be made a part of the adopting resolution and of this agreement by appendix listing and will be effective upon approval by each member jurisdiction using procedures contained in Article XIX.

B. Any jurisdiction may amend its exceptions by serving copies of the proposed changes on AAMVA and all member jurisdictions. Upon approval of all contracting jurisdictions, the amended or proposed exception shall

be effective in the next succeeding registration year provided at least 30 days notice has been given.

C. The withdrawal or cancellation of an exception shall be accomplished by filing due notice of such action with AAMVA and becomes effective upon notification to all member jurisdictions using the procedures contained in Article XIX. The withdrawal or cancellation of an exception shall not require approval by the member jurisdictions.

D. There shall be no exceptions taken, however, to the following concepts embodied in this agreement:

1. Single registration plate;

2. Single registration (cab) card; and

3. Ability to perform both interstate and intrastate vehicle movements.

XVIII—Other Agreements

[The IRP supersedes all other agreements between members ". . . covering, in whole or in part, any of the matters covered by the agreement." From the provision it is clear that agreements relating to matters not specifically covered by the IRP continue in force and effect. For example, any agreement granting full reciprocity (no fees for licensing) to vehicles not apportionable under the Plan would continue in effect (for purposes of this commentary an "agreement" is deemed to include "arrangements" and "understandings"; see commentary under Article II.B.).]

This agreement shall supersede any reciprocal or other agreement, arrangement or understanding between any two or more of the member jurisdictions covering, in whole or in part, any of the matters covered by this agreement; but this agreement shall not affect any reciprocal or other agreement, arrangement or understanding between a member jurisdiction and any non-member jurisdiction.

XIX—Administration

A. The AAMVA shall be the official repository of this agreement and shall be responsible for the required duties attendant to the administration of this agreement.

B. When two or more jurisdictions become signatories to this agreement, and as each jurisdiction thereafter joins the agreement, each jurisdiction shall send the prescribed adopting resolution to AAMVA in Washington, D.C. Upon receipt of such resolution, AAMVA shall provide a copy to each member jurisdiction for the purpose of obtaining the required endorsement. Each member jurisdiction shall notify AAMVA as to its endorsement or rejection of the applicant jurisdiction.

C. The AAMVA shall keep all jurisdictions apprised of the current status of the agreement in the manner determined by the Association to best accomplish this purpose.

D. Decisions regarding interpretations of any question at issue or formal policy procedures relating to this agreement shall be reached by agreement of three-fourths of the member jurisdictions, acting through the Commissioners thereof, and upon determination shall be placed in writing and be retained by AAMVA as a part of the permanent records which shall be binding on member jurisdictions where not in conflict with existing statute. Each such matter to be decided under this section shall be placed in writing and shall be presented to each member jurisdiction Commissioner for approval or rejection.

E. All issues requiring approval, or agreement, of the member jurisdictions shall be determined by ballot mailed by the repository, by certified mail return receipt requested, to each member jurisdiction. Entry into the

Plan, defined in Article XVI, and exceptions to the Plan, defined in Article XVII, require approval and endorsement by all member jurisdictions. On all other issues failure on the part of a member jurisdiction to respond to any ballot on matters pertaining to interpretations and amendments as set forth in Articles XIX(D) and XX of the IRP within 120 days of its receipt shall be deemed as approval by that jurisdiction.

XX—Amendments

This agreement may be amended, subject to the approval of three-fourths of the member jurisdictions, acting through the officials thereof authorized to enter this agreement. All proposed amendments shall be in writing and have been presented in one or more open meetings of Commissioners. Such proposed amendment must be accompanied by a memorandum setting forth the intent and purpose of the proposed amendment which memorandum shall be filed by the repository along with the amendment.

XXI—Effective Date

This agreement shall become effective upon the approval by any two jurisdictions and shall be operative between jurisdictions upon their signing or adopting this agreement.

XXII—AAMVA

The American Association of Motor Vehicle Administrators, AAMVA, hereby accepts the responsibilities herein above assigned to it.

By: _____
Executive Director, AAMVA

Signed this the _____ day of _____, 19— by the following jurisdictions, acting through their authorized officers:

APPENDIX A

RESOLUTION ADOPTING THE INTERNATIONAL REGISTRATION PLAN

WHEREAS, the International Registration Plan was formed to provide a uniform system for the registration of vehicles used interjurisdictionally, and

WHEREAS, it is the purpose of the Plan to implement the concept of one registration plate and one registration (cab) card for one vehicle;

NOW THEREFORE, in consideration of the mutual and reciprocal benefits to flow therefrom in accordance with the laws of this jurisdiction, the _____

_____
(Title of the Official)

acting in pursuant to _____
(Insert statutory authority)

and on behalf of the State/Province of _____, does hereby ratify the INTERNATIONAL REGISTRATION PLAN with no exceptions—exceptions as attached hereto. (Strike out the phrase that does not apply)

IN TESTIMONY WHEREOF, the State/Province of _____, acting through its duly authorized officials, has caused this resolution to be adopted to make the State/Province of _____, a member of and a party to the agreement herein mentioned, subject to the endorsement by all jurisdictions now party to the agreement.

Adopted this _____ day of _____, 19——.
FOR the State/Province of _____

BY: _____ _____
Signature Title

ENDORSEMENT: For the State/Province of ————

As required by Section A of Article XVI of the International Plan, this Resolution of Ratification is hereby endorsed on this ———— day of ————, 19————.

BY: ———————— ————————

Signature Title

APPENDIX B

ROSTER OF MEMBER JURISDICTIONS

Jurisdiction	*Date Signed*	*Date of Entry*
Kentucky	September 13, 1973	September 13, 1973
Tennessee	September 13, 1973	September 13, 1973
Missouri	September 13, 1973	September 13, 1973
Texas	September 13, 1973	September 13, 1973
Minnesota	September 13, 1973	January 1, 1975
Oregon	September 13, 1973	January 1, 1975
Nebraska	September 13, 1973	January 1, 1975
Utah	September 13, 1973	January 1, 1975
Colorado	September 13, 1973	January 1, 1975
Alberta	July 22, 1974	January 1, 1975
South Dakota	August 5, 1974	January 1, 1975
Mississippi	November 4, 1974	November 1, 1975
Virginia	February 24, 1975	March 1, 1975
Wyoming	July 14, 1975	January 1, 1976
Montana	October 10, 1975	January 1, 1976
Arkansas	October 10, 1975	July 1, 1976
Louisiana	December 1, 1975	April 1, 1976
Idaho	December 10, 1975	January 1, 1976
Illinois	July 7, 1976	January 1, 1977
North Carolina	July 16, 1976	January 1, 1977
Oklahoma	January 19, 1977	January 1, 1978
Wisconsin	May 23, 1977	January 1, 1978
Iowa	August 17, 1977	January 1, 1978
Alabama	September 5, 1979	October 1, 1980
Arizona	May 9, 1980	January 1, 1981
North Dakota	June 19, 1980	January 1, 1981
Kansas	July 9, 1980	January 1, 1981
Pennsylvania	Application Pending	

APPENDIX C

EXCEPTIONS TO THE INTERNATIONAL REGISTRATION PLAN

ALBERTA

Vehicles operating on the highways of Alberta without being proportionally registered as required by this agreement or temporarily registered with Alberta permits will be required to pay the full Alberta Motor Vehicle Registration fees plus any applicable penalties.

ARIZONA

Pursuant to Article XVII, and in accordance with Article IV, Section C and Article XI, Section B, Paragraph 3c, the State of Arizona files the following exception relating to trailers and semitrailers:

For registration purposes, trailers and semitrailers, including pool fleet trailers and semitrailers apportioned pursuant to Article XI, Section B, Paragraph 3c, are apportionable vehicles as defined in Article II, Section B, of the Agreement, and must be properly registered with the State of Arizona before operation on the highways in Arizona. Apportioned trailers and semitrailers must be properly identified by means of an appropriate plate and an apportioned cab card issued by the base jurisdiction. The fees shall be computed by using the factor determined in the same manner as prescribed for other apportionable vehicles.

COLORADO

Colorado requires the registration of trailers, semitrailers and auxiliary axles as provided in Colorado Revised Statutes 1973, Title 42, Chapter 3, Article 102.

NOTE: This does not mean that Colorado requires such vehicles to display a license plate in this state

if the base state does not issue a license plate or register such vehicles. We want (*sic*) the base state to include these vehicles on the applications submitted to Colorado.

IDAHO

Pursuant to Article VII, the State of Idaho files the following exceptions:

A) There are no credits for replacement vehicles; plates are not transferable (statutory).

B) If vehicle is destroyed, plates are transferable for a $5 fee.

C) The maximum fee charged on the power unit is $100, which is apportioned.

ILLINOIS

Pursuant to Article XVII, and in accordance with Article IV, Section C hereof, the State of Illinois herewith files the following exceptions:

All trailers are required to be prorationally registered prior to being operated on the highways of the State of Illinois. The fees for trailers shall be determined by applying the same apportionment factor as employed in Article III. Miles generated by trailers shall not be used in computing the Illinois apportionment factor. The applicant shall include a listing identifying all trailers with their proper vehicle identification number.

IOWA

Vehicles operating on the highways of Iowa, without being proportionally registered and operating under the

reciprocity extended by Chaper 326.23, Code of Iowa, 1975 ($10 72-hour trip permit) are limited to such operations and movements are exclusively interstate in character. Such vehicles operating intrastate will be subject to full Iowa registration fees as required by Chapter 321.54, Code of Iowa, 1975, or be proportionally registered.

KANSAS

1) Kansas will not proportionally register any motor vehicle not having a gross weight in excess of twelve thousand (12,000) pounds.

2) The requirement set forth in Article IX A.1. that registration be in both the name of lessee and lessor shall not apply to Kansas. Kansas will issue registration solely in the name of the lessee, the operating carrier. (This exception is not applicable to Article II Section C.3. of this Plan.)

3) "Apportionable Vehicle" as defined by Article IIB. includes trailers, semitrailers and auxiliary axles. Article IVC. allows member jurisdictions to waive apportionment of such vehicles. However, the same article provides that jurisdictions requiring proportional registration of such vehicles are to file an exception to the Plan. Kansas will not proportionally register trailers, semitrailers and auxiliary axles. Kansas feels the proper procedure to follow is for those jurisdictions not requiring proportional registration of such vehicles to file an exception to Article IIB. This position is contrary to Article IVC. which requires those jurisdictions requiring such registration to file the exception.

MONTANA

The State of Montana will require all trailers, semitrailers and all other trailing vehicles or combinations of trailing vehicles, except mobile equipment, be included in the fleet.

NEBRASKA

Vehicles operating on the highways of Nebraska, without being proportionally registered and operating under the reciprocity extended by the $10 72-hour Trip Permit are limited to such operations and movements as are exclusively interstate in character. Vehicles operating or moving between two points in Nebraska or carrying any merchandise or passengers between two points in Nebraska will be required to pay the full Nebraska Motor Vehicle Registration fees and taxes as required by R.S.S., NEBR 1943, Section 60-305.03, or be proportionally registered.

NORTH CAROLINA

Vehicles operating on the highways of North Carolina without being proportional registered as required by this agreement or temporarily registered with North Carolina permits will be required to pay the full North Carolina Motor Vehicle Registration fees plus any applicable penalties.

NORTH DAKOTA

1) Under Section II, paragraph E of the Plan, commissioner shall mean the North Dakota State Highway Commissioner.

2) Trailers and semitrailers are required to be registered pursuant to Sections 39-04-18 and 39-04-19, of the North Dakota Century Code.

3) Vehicles operating in the state by virtue of a trip permit $10 for 72 hours) are limited to interstate movements and operations.

OREGON

As provided in Article IV, Section C all trailers, semitrailers and auxiliary axles are required to be registered before they may be operated on the highways of the State of Oregon. The fees shall be computed by using the factor determined in the same manner as described by other apportionable vehicle.

The vehicles will be identified by means of an apportioned plate issued by the base jurisdiction in the same manner as any other apportionable vehicle.

Those jurisdictions that do not require identification plates for auxiliary axles may apply the fees to the trailer or semitrailer and withhold issuing any apportionment credentials.

As provided in Article IV, Section D.1., the applicant will include a listing identifying the power units, trailers, and semitrailers with the proper vehicle identification serial numbers and the license plate numbers issued by the base jurisdiction.

TEXAS

Vehicles operating on the highways of Texas without being proportionally registered as required by this agreement or temporarily registered with Texas 72-hour permits will be required to pay the full Texas Motor Vehicle Registration fees plus any applicable penalties.

VIRGINIA

Vehicles operating on the highways of Virginia without being proportionally registered as required by this agreement, or temporarily registered with Viginia 10-day permits, will be required to pay the full Virginia Motor Vehicle Registration fees plus any applicable penalties.

WYOMING

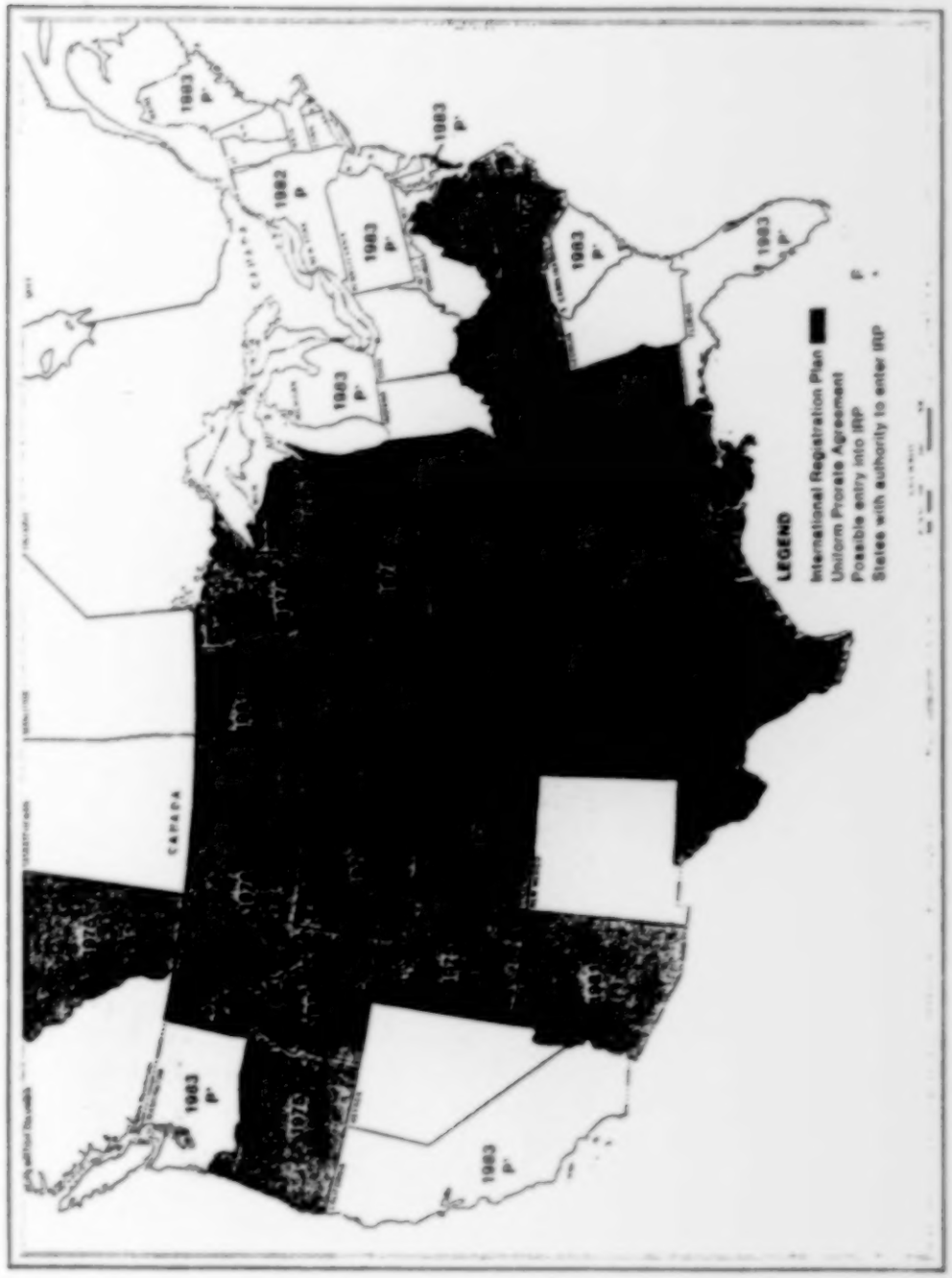
Pursuant to XVII of the International Registration Plan and in compliance with IV (C) thereof, the State of Wyoming requires that all trailers and semitrailers be registered for operation on the highways of the State of Wyoming. Registration fees are the same for trailers and semitrailers as for motor vehicles and are computed in the same manner.

Trailers and semitrailers for which the State of Wyoming is the base jurisdiction will each be issued an apportioned plate similar to those apportioned plates issued to motor vehicles. The State of Wyoming will honor trailer and semitrailer plates of other base jurisdictions issued as provided by their laws.

INTERNATIONAL REGISTRATION PLAN—Membership Status

APPENDIX D

MAP OF IRP STATES



PLAINTIFFS' EXHIBIT 52

ARKANSAS TOTAL HIGHWAY TAX COST
COMPARISON-TYPICAL TRUCK *
ARKANSAS-BASED TRUCK v. FOREIGN-BASED TRUCK **
1983

Tax Element	Cost per Mile: Arkansas Based	Cost per Mile: Foreign Based
Annual Vehicle Registration $1,044/70,000 miles	$0.0149	$0.0149
Fuel Tax 10.5¢/gallon 5.1 miles/gallon	0.0206	0.0206
Highway Use Equalization Tax	0.0089	0.0358
Plaintiff's Exhibits 45 and 46	——	——
Total Highway Tax Cost	$0.0444	$0.0713

* The "typical truck" used in this exhibit is more fully described in *Road User and Property Taxes on Selected Motor Vehicles*, Federal Highway Administration, 1982. Of particular interest here, the vehicle is a five-axle tractor-semi-trailer combination operating at a combined gross vehicle weight of 78,000 lbs. and traveling 70,000 miles annually.

** Foreign-Based, as used in this exhibit, refers to the majority of states which are members of the International Registration Plan and, therefore, pay identical registration fees to Arkansas for the privilege of highway use prior to the registration period. These states include Alabama, Arizona, Colorado, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin and Wyoming. In the remaining states, registration fees for this "typical vehicle" range from a low of $85.00 in New Mexico ($0.0012 per mile) to $1,175.90 in Vermont ($0.0168).

PLAINTIFFS' EXHIBIT 53

[SEAL]

U.S. Department
of Transportation

Federal Highway Administration

ROAD USER AND PROPERTY TAXES ON SELECTED MOTOR VEHICLES 1982

Highway Statistic Division/Office of Highway Planning

Drew Lewis
Secretary of Transportation

R.A. Barnhart
Federal Highway Administrator

For sale by the Superintendent of Documents,
U.S. Government Printing Office
Washington, D.C. 20402

INTRODUCTION

In this report, individual road-user tax payments are compared for each vehicle, and total direct State road-user and personal property taxes are measured. With this information, comparisons can be made among vehicles, among States, and among types of service. The tax rates in effect January 1, 1982, have been used, and the taxes that would be paid for a full year in each State are shown for each vehicle studied. The objective is the measurement of payments, and it is not the intent to assess the merits of the taxes imposed nor to indicate support for or opposition to any tax policy.

During the past 31 years, eight studies were published by the Federal Highway Commission that compared the magnitude of State highway-user taxes and property taxes on a selected group of vehicles. These studies in 1950, 1953, 1956, 1960, 1964, 1968, 1970, and 1973 provided reference points along the full range of vehicle sizes and use classes so that comparisons could be made among States on the effect of each of the taxes, as well as the yield from the entire group of taxes.

For those who have used the earlier studies, the similarity of subject matter and methods of presentation in this one should be helpful. Some of the vehicles selected for this study differ slightly from those used in earlier studies. This selection reflects recognition of changes in usage and legislation governing vehicle registration, classifications, and weights.

As in the prior studies, the vehicles chosen as examples and the operating factors applying to them are considered to be representative of the kinds and sizes of vehicles generally in operation throughout the United States. The assumed amounts and condition of their use are believed to be reasonable; however, they are not claimed to be average. They were selected, rather, to show given points in the tax structures of the States. No consideration was

given to the concentration of vehicles in various groups, a factor that will be of importance in applying the findings of this study.

The principal portion of current State road-user revenues is derived from the motor-fuel tax and from registration fees on motor vehicles. The need to generate additional revenues to provide for the increased costs of highway maintenance and construction has resulted in increased tax rates for gasoline in 35 States and diesel fuel in 33 States since 1975. Registration fees increased for automobiles in 21 States, for trucks in 26 States, for buses in 18 States, and for motorcycles in 25 States since 1975.

In an attempt to more equitably distribute the highway-user tax burden, three States adjusted the automobile registration fee and two States the truck fee since 1975. In this same period, one State, each, decreased truck, bus, and motorcycle registration fees.

The establishment, by legislation, of the variable tax rate is a recent development in motor fuel taxation. Washington was the first State to establish this type of tax rate in 1978 based on the price of motor fuel. Since then Indiana, Kentucky, Massachusetts, New Mexico, and Rhode Island have established a variable tax rate, also based on the price of motor fuel, and the District of Columbia established this type of tax rate based on the Consumer Price Index. Three other States have established a variable tax rate in addition to a basic cents-per-gallon rate. They are Nebraska, with the variable portion based on price of motor fuel; Ohio, with the variable portion based on motor fuel consumption and highway maintenance costs; and Pennsylvania, with the variable portion based on highway petroleum product sales.

A study of the taxation of motor vehicles inevitably reveals some anomalies in the tax structures of the States. In some instances, these are the result of gaps

or oversight in legislation. In others, they may have resulted either from a definite purpose or from developments not anticipated when the legislation was enacted. The most notable of course, was the adaptation of the diesel engine for highway vehicles and its use for years in many States without being subject to motor-fuel taxation. Now, all States except Vermont and Wyoming tax diesel fuel used on the highways. Vermont imposes registration fees on diesel-powered vehicles that are 75 percent greater than the registration fees for gasoline-powered vehicles, while Wyoming imposes a compensatory tax on diesel-powered vehicles that is greater than the tax on gasoline-powered vehicles. There is also no fuel tax shown on tables for diesel-powered vehicles in Idaho and Oregon. This does not mean that there is no tax charge, but rather that the manner of collection is through a special schedule of mileage taxes that contain an "in lieu" fuel tax portion.

The methods used and assumptions made in processing the data should be studied carefully to avoid misunderstanding. The methods and assumptions are shown in the "Specifications, Use Factors and Method of Presentation" section of this report.

THE TYPICAL VEHICLES

The bases for registering motor vehicles vary considerably among the States. The most common basis for registering passenger cars is the flat fee, as shown in table 2, but there are several groupings and variations, e.g., Mississippi determines its levy by compounding a fixed fee and tax components based upon gross weight and vehicle age. Trucks and vehicle combinations are registered in 35 of the States on a gross vehicle weight basis, but among the remainder of the States there are many variations in the classification and taxation of trucks and combinations. The bases for registering trucks are given in table 3. Table 4 shows the basis for register-

ing a common carrier bus in intercity, intrastate service. The most common basis is gross weight; empty weight and seating capacity bases are also widely used. A flat rate is applied in four States, and in others combinations of these factors plus additional bases, including age, horsepower, and number of axles, are used. Motorcycles are registered on a flat fee basis in all but four States. In Hawaii and New York, motorcycles are registered according to weight, in South Dakota they are registered on the basis of engine displacement, and in Iowa they are registered on the basis of age.

The determination of whether data from any State for any given vehicle would be included or excluded from the study was based primarily on whether the vehicle, as specified, would be registered and permitted to operate in that State. In some States the vehicle or combination could be registered but could not be operated legally with a full load. All such vehicles were omitted from the study, even though they could be registered and might sometimes be operated on the highways of the State with slightly lower gross weights. Where minor variances of axle spacing would permit a vehicle to be used legally in a State, it was assumed for study purposes that the vehicle so altered was essentially the same as that described in the specification sheet and could be reasonably compared with the vehicle of the same description from other States. Consideration was given to any allowance permitted by law relating to scale accuracy or enforcement tolerances.

A direct comparison between the two heaviest truck combinations is not possible due primarily to the increase in weights since the earlier study. The trend toward heavier vehicles and the increase in number of States permitting these vehicle combinations, however, is readily apparent from a comparison of data between the two studies. The 1973 study showed that both of the vehicle types were permitted in 17 States. The 1982 study shows that these vehicle types (No. 12 and No. 13) are permitted in 30 States even though the current vehicle specifications show an increase in gross weight.

Both vehicle types are now allowed in five States where neither was before: Florida, Iowa, Minnesota, New York, and Wisconsin. In 1973, only the tractor-semitrailer, full trailer combination was permitted in Indiana, Kansas, Kentucky, Maryland, North Dakota, Oklahoma, South Dakota, and Texas. In 1982 both are permitted.

The status of the two largest truck combinations (No. 12 and No. 13) is shown geographically in figure 5.

Tractor-semitrailer combinations are registered as single units in 40 of the States; in 7 States and the District of Columbia, tractor trucks and semitrailers are registered as separate units; and in 3 States, they may be registered as single units or separately. In this study, combinations are considered to be registered as single units in those States where the fee for either the tractor or the semitrailer is based on the gross weight or capacity of the combination, even though in most of these States a relatively small fee is also levied on the other unit of the combination. In the three States in which the owner has the option of registering his combination as a single unit or as separate units, it has been assumed that the owner would choose the method that would result in the lowest registration fee. The States were asked to rate the vehicles as they are customarily requested by the owners, thus, Montana showed combinations registered as separate units while Delaware and Washington showed combinations registered as single units.

Fifteen vehicles were selected to illustrate the range and magnitude of State taxes on motor vehicles: three passenger cars, five single-unit trucks, five vehicle combinations, a bus, and a motorcycle.

Their relative sizes and axle arrangements are shown in silhouette inside the front cover. The vehicles selected are in general use and are sufficiently similar to vehicles

selected for the preceding studies to permit comparisons. The user is reminded that the basic purpose of the study is to present a series that permits comparison of the tax scales of the States at several points, rather than to present common or average vehicles. Description of the vehicles follows:

Passenger Vehicles:

No. 1—A lightweight sedan.

No. 2—A mediumweight sedan.

No. 3—A heavyweight sedan.

No. 14—A 47-seat, diesel-powered, intercity bus.

No. 15—A motorcycle.

Single-Unit Trucks:

No. 4—A gasoline-powered pickup truck registered for 5,000 pounds gross weight.

No. 5—A gasoline-powered stake truck registered for 14,000 pounds gross weight.

No. 6—A gasoline-powered van truck registered for 24,000 pounds gross weight.

No. 7—A diesel-powered van truck registered for 24,000 pounds gross weight.

No. 8—A tandem-axle diesel-powered dump truck registered for 50,000 pounds gross weight.

Vehicle Combinations:

No. 9—A three-axle, tractor-semitrailer, gasoline-powered, registered for 40,000 pounds gross weight.

No. 10—A four-axle, tractor-semitrailer (tandem axles on the semitrailer), diesel-powered, registered for 60,000 pounds gross weight.

No. 11—A five-axle, tractor-semitrailer (tandem axles on both units), diesel-powered, registered for 78,000 pounds gross weight.

No. 12—A five-axle combination consisting of a two-axle diesel-powered tractor-truck, a single-axle semitrailer, and a two-axle full trailer, registered for 80,000 pounds gross weight.

No. 13—A five-axle combination consisting of a three-axle diesel-powered truck and a two-axle full trailer registered for 80,000 pounds gross weight.

The automobiles for this study were selected to be comparable in weight to those used in the previous study. This was done to reflect the high and low rates in the State taxation structures for many of the 20 States and the District of Columbia that base their registration fees on weight, to aid in comparison of like-sized vehicles between the two studies and to reflect the total automobile fleet mix rather than the mix for the 1980 model year.

A major development since the previous study has been the decrease in size, weight, and horsepower of the automobiles produced and sold. The primary causes of this trend are federally mandated fuel economy standards and the public's desire for more fuel efficient automobiles in the face of rising fuel costs. Care should be taken to make allowances for this development when using the figures in this study, particularly the registration fee and motor-fuel tax figures.

Another development since the previous study has been the increase in the maximum vehicle weights permitted in a number of States, increased use of heavier trucks, and the increased use of diesel engines in the lighter-weight trucks. Consequently, the gross weights of the combination trucks over 40,000 pounds have been increased and a 24,000 pound diesel-powered truck has been included. The 55,000-pound four-axle tractor-semitrailer

combination has been increased to 60,000 pounds, the 72,000-pound five-axle tractor-semitrailer combination has been increased to 78,000 pounds, and both the five-axle tractor-semitrailer and full trailer combinations have been increased from 72,000 pounds and 76,000 pounds, respectively, to 80,000 pounds. The 55,000-pound gasoline-powered four-axle tractor-semitrailer has been dropped.

To compare taxes on vehicles that differ primarily in the fuel used, data have been included on two types of 24,000 pound van trucks (Nos. 6 and 7). One type has a gasoline engine and the other a diesel engine. An arbitrary assumption, but one considered reasonable, was made of a fuel consumption rate of 5.9 miles per gallon for the gasoline vehicle and of 6.9 miles per gallon for the diesel vehicle.

Nine States impose a higher tax on diesel fuel than on gasoline. These States, and the tax rates in cents per gallon as of January 1, 1982 are as follows:

State	Gasoline	Diesel
Alabama	11	12
Arkansas	9.5	10.5
Iowa	13	13.5
Kansas	8	10
Mississippi	9	10
Montana	9	11
New York	8	10
Tennessee	9	12
Texas	5	6.5

TABLE I - DATA USED IN COMPUTING STATE ROAD USER AND PERSONAL PROPERTY TAXES ON SELECTED VEHICLES

1982 REGISTRATION YEAR

SHEET 2 OF 2

FACTORS AFFECTING TAXATION	TRACTOR-SEMITRAILER COMBINATION CONT.				TRACTOR-SEMITRAILER AND FULL TRAILER			TRUCK-FULL TRAILER		BUS	MOTORCYCLE
	NO. 10 (2-S2) (DIESEL)		NO. 11 (3-S2) (DIESEL)		NO. 12 (2-S1-2) (DIESEL)			NO. 13 (3-2) (DIESEL)		NO. 14 (DIESEL) INTERCITY	NO. 15
	TRACTOR-TRUCK	SEMITRAILER	TRACTOR-TRUCK	SEMITRAILER	TRACTOR-TRUCK	SEMITRAILER	FULL TRAILER	TRUCK	FULL TRAILER		
Body Type	Tractor	Van 40'	Tractor	Van 40'	Tractor	Van 27'	Van 27'	Tank Truck	Tank Trailer	47 Seat	-
Price F.O.B. Factory (1980)	$28,992	$13,925	$ 46,592	$13,925	$ 40,719	$ 9,250	$13,050	$ 65,535	$ [illegible],356	$106,000	$1,040
Horsepower, Max. Brake	-	-	-	-	-	-	-	-	-	275	-
Horsepower, Net	210	-	290	-	283	-	-	270	-	-	-
No. of Cylinders	6	-	6	-	8	-	-	6	-	8	2
Displacement cc.	-	-	-	-	-	-	-	-	-	-	395
Weight:											
Empty Weight lb.	10,171	11,110	15,752	11,110	12,601	6,717	9,997	17,679	7,110	26,900	370 (Dry)
Load Weight lb.	17,829	20,690	30,248	20,690	19,399	11,283	20,003	22,322	32,890	9,500	330
Gross Vehicle Weight lb.	28,000	32,000	46,000	32,000	32,000	18,000	30,000	40,000	40,000	36,400	700
Gross Weight of Combination lb.	60,000	-	79,000	-	80,000	-	-	80,000	-	-	-
Length:											
Wheelbase in.	136	-	143	-	119		-	226	-	285	54.7
Distance between Tandem Axles in.	-	48	49.6	48	-	-	-	51.5	-	48.3	-
Length of Combination ft.	50	-	50	-	65	-	-	63.75	-	40 (Bus)	-
Tires:											
Size	11R22.5	11R22.5	10R20	11R22.5	11R24.5	10R20	10R20	11R22.5	11R22.5	12.5R22.5	Front 3.60X19 Rear 4.10X18
Arrangement: Front	Single	-	Single	-	Single	-	Dual	Single	Dual	Single	-
Rear	Dual	Dual-Tandem	Dual-Tandem	Dual-Tandem	Dual	Dual	Dual	Dual-Tandem	Dual	Dual & Single Tandem	-
Total Annual Miles Traveled:											
Personal Use	-	-	-	-	-	-	-	-	-	-	-
Private Operation	50,000	-	70,000	-	80,000	-	-	80,000	-	-	2,700
Contract Carrier	60,000	-	70,000	-	80,000	-	-	80,000	-	1/ 87,500	-
Farm Service	-	-	-	-	-	-	-	-	-	-	-
Average Miles Per Gallon:											
Personal Use	-	-	-	-	-	-	-	-	-	-	-
Private Operation	5.8	-	4.8	-	4.7	-	-	4.7	-	-	57
Contract Carrier	5.8	-	4.8	-	4.7	-	-	4.7	-	-	-
Farm Service	-	-	-	-	-	-	-	-	-	1/ 5.9	-
										-	-
Annual Motor Fuel Consumption:											
Personal Use gal.	-	-	-	-	-	-	-	-	-	-	-
Private Operation gal.	8,621	-	14,583	-	17,021	-	-	17,021	-	-	19
Contract Carrier gal.	10,345	-	14,583	-	17,021	-	-	17,021	-	-	-
Farm Service gal.	-	-	-	-	-	-	-	-	-	1/ 14,831	-
Total Property Ton-Mile (Avg. Load.)	691,130	-	1,094,705	-	1,[illegible]80	-	-	1,[illegible],[illegible]30	-	-	-
Average Gross Weight lb.	[illegible],537	-	[illegible],653	-	[illegible],[illegible]14	-	-	[illegible],[illegible]17	-	-	-
Gross Annual Earnings	$21,600	-	$ 114,410	-	$ 114,[illegible]9	-	-	$ 141,[illegible]	-	1/ [illegible],[illegible]	-
										1/ [illegible],[illegible]	

1/ In contract carrier service (Class I).

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PLAINTIFFS' EXHIBIT 56

ARKANSAS TOTAL TAX COST
COMPARISON-TYPICAL TRUCK *
ARKANSAS-BASED TRUCK v. FOREIGN-BASED TRUCK **
1983

Tax Element	Cost per Mile	
	Arkansas Based	Foreign Based
Annual Vehicle Registration		
$1,044 x 19,386/70,000=289.13 $1,044 x 2,389/70,000 = 35.63	$0.0149	$0.0149
Fuel Tax	0.0206	0.0206
10.5¢/gallon 5.1 miles/gallon		
Highway Use Equalization Tax	0.0089	0.0358
Plaintiff's Exhibit 45 and 46	——	——
Total Highway Tax Cost	0.0444	$0.0713

* The "typical truck" used in this exhibit is more fully described in *Road User and Property Taxes on Selected Motor Vehicles*, Federal Highway Administration, 1982. Of particular interest here, the vehicle is a five-axle tractor-semi-trailer combination operating at a combined gross vehicle weight of 78,000 lbs. and traveling 70,000 miles annually.

** Foreign-based, as used in this exhibit, refers to the majority of states which are members of the International Registration Plan and, therefore, pay identical registration fees to Arkansas for the privilege of highway use prior to the registration period. These states include Alabama, Arizona, Colorado, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin and Wyoming. In the remaining states, registration fees for this "typical vehicle" range from a low of $85.00 in New Mexico ($0.0012 per mile) to $1.175.90 in Vermont ($0.0168).

PLAINTIFFS' EXHIBIT 3

Arkansas State Highway and Transportation Department
Research for the Robertson Conferring Arkansas-Based HUE Taxpayers
Revised ATA Survey Information 1 of 2

HUE

IRP Account No.	Taxpayer / Owner	Tax Method $.05	Tax Method $175.00	Number of Heavy Trucks	Tax Cost	IRP Report Arkansas Mileage	IRP Cost Per Mile	Interstate/NL User Reported AR Mileage	Interstate User Cost Per Mile	Survey Cost Per Mile	Tax Cost on Survey	Mileage on Survey
3744	A&H Enterprises		✓	45	$ 7875.00	3283469	$ .0240	4000010	$ .0190	$ .0229	$ 71775.00	3285846
4412	A&H Truck Line Inc		✓	67	11725.00	11801774	.0099	1164162	.0091	.0091	117250.00	12909779
1553	Allen Canning Co		✓	7	1225.00	2676012	.0046			.0080	5850.00	1483288
5245	Allen Canning Co		✓	41	7175.00	2142557	.0066	4751179	.0125	.0246	94725.00	7142287
24000	Allen Trucking Co		✓	2	1225.00	3499751	.0035				1750.00	1171731
3334	Ark-Ida Feed Co		✓	7	1225.00	2213123	.0055				11225.00	2271323
3045	Arkansas Lumber Co-op Inc		✓	57	9975.00	2797075	.0036	2194225	.0051	.0051	4675.00	2884225
1733	Atlas Pecan Co		✓	7	1225.00	2311069	.0053	3035552	.0054	.0053	12225.00	2311069
WIP 5346	Bates Carpets											
3119	Bateman Farms Organ		✓	20	3500.00	4391696	.0080	4477983	.0078	.0098	3500.00	4314976
WIP 2742	Batesville Truck Comp											
4678	Benton Veneer Co		✓	1	175.00	1942299	.0090			.0091	175.00	2155516
1229	Bibb Brothers		✓	6	1050.00	4461332	.0024			.0119	13200.00	7500000
7779	Big Piney Lumber Co, The		✓	5	875.00	1187601	.0007			.0060	875.00	1946200
WIP 4015	Bill Black Black Trailer											
21103	Bobcat Inc		✓	5	875.00	3964197	.0022			.0085	2775.00	3146357
4418	Bobby Henson		✓	2	350.00	6143520	.0057			.0057	350.00	6145614
251	Bodcaw Inc		✓	40	7000.00	3980226	.0176			.0176	70000.00	3978014
WIP 4198	Brown Trucking Inc											
Not Listed	Buffalo Trucking ML											
4509	Builders Supply Co		✓	3	525.00	8491210	.0062			.0062	525.00	8491210
5216	Bunley Barnett		✓									
WIP 1052	C & L Trucking											
4687	Calvin Fyler		✓	1	175.00	2800000	.0062			.0057	1750.00	3071429
3331	Cargill Incorporated		✓	13	2275.00	1594919	.0117			.0143	2275.00	1594919
6281	Charles Ketchel		✓	1	175.00	5000000	.0035			.0044	1750.00	4000000
WIP 1363	Chesley A Myers											
Not Listed	Chrysler Body Plt ML											
Not Listed	Cities Service Co ML											
No 331 Renewal	Clarke & Jackson Inc ML		✓									
4776-A	Class 7th Bldg of S. Ark		✓	1	175.00	4650000	.0038			.0038	7000.00	8000000
WIP 4838	" " "											
WIP 4791	" " Co											
Not Listed	Coleman Canning Co ML											
1626	Columbia Grain Corp		✓	8	1400.00	7993222	.0030	9189412	.0017	.0098	5950.00	7999322
5350	Coller Oil Co		✓	1	175.00	1094040	.0017			.0029	1750.00	6030000
3514	Crystal Oil Co		✓	18	3150.00	5087971	.0036	5211438	.0060	.0060	3150.00	5211438
2157	D D C Enterprises		✓	1	175.00	1354710	.0130			.0259	1750.00	675050
Not Listed	Dalley Hibbard ML											
WIP 4350	Daily Lumber Co											
				295	$ 52150.00	7353502	.0070	1458771			507225.00	2837973

Enclosed

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Arkansas State Highway and Transportation Department
Research for Hwy Retention Rulemaking Re Based IRUE Taxpayers
Revised ATA Survey Information

2 of 2

	IRP Account No.	Taxpayer / Owner	Tax Method $.05	Tax Method $175.00	Number of Heavy Trucks	Tax Cost	ERP Reported Arkansas Mileage	IRP Cost Per Mile	Survey Cost Per Mile	Tax Cost on Survey	Mileage on Survey
1	605	Dale Rogers Trucking		✓	1	$ 175.00	31760	$ .0551	$ .0551	$ 175.00	31760
2	Not Listed	Dana Setzer Trucking									
3	Not Listed	Darrell D. Clyde Flora									
4	3681	David Davidson Trucking		✓	1	175.00	142693	.01220	.00123	175.00	142693
5	111A	Delp Inc		✓	26	4550.00	2654467	.01719	.01689	4726.00	2797699
6	6492	Delta Farms & Inc.		✓	1	175.00	313556	.00556	.00056	175.00	313556
7	WIP 4629	Eagle Creek Farms									
8	Not Listed	Ed Dame Jr Trucking									
9	WIP 11858	Elmus Burton									
10	Not Listed	Elven R. Lukkerson									
11	6859	Ems Trucking		✓	4	700.00	1400490	.00050	.00050	700.00	14000980
12	WIP 1509	Floyd Ammon									
13	WIP 2271	Forrest Dabbs									
14	WIP 2k	Frank Combs									
15	Not Listed	Hank Thompson Transport									
16	5680	Hart Enterprises		✓	1	175.00	40113	.04436	.04436	175.00	40111
17	WIP 2452	Franklin Hay									
18	2577	G Ray Baker Trucking		✓	10	1750.00	5997999	.00044	.00044	1750.00	39778998
19	Not Listed	Garland Ridgell Sand									
20	WIP 2509	Gary Quisby									
21	Not Listed	Gary Reed									
22	WIP 2812	Glen Nelson									
23	5116B	Grover & Ruth Knapp		✓	1	175.00	21300	.00812	.00812	175.00	21300
24	1183	Gulf Supply Co		✓	1	175.00	1182558	.00074	.00074	175.00	1182558
25	5892	Harlan's Trucking		✓	5	164.15	32897	.00500	.00500	164.15	32897
26	5417	Harvard Building Co.		✓	5	175.00	1104425	.00099	.00099	1104.25	1104425
27	WIP 3764	Hope Agr Products		✓							
28	114	Hope Rock Crushing		✓	3	5.25	23944	.00223	.00111	52.50	27432
29	12000	J & J Trucking		✓	1	1.48	16960	.00500	.00500	84.80	16960
30	42	J B Hunt		✓	504	88200.00	23822113	.00306	.00298	7350.00	2382113
31	2665	J B Buffy Hauling	Trailer Only								
32	WIP 12	J W Trucking Service									
33	4036	J. M. Watson		✓	2	350.00	40500	.00486	.00086	350.00	4050000
34	Not Listed	Jerry Stone									
35	11477	Joe W Smith		✓	1	175.00	500436	.00035	.00035	175.00	5008364
36	5339	John H Neal Inc		✓	15	2275.00	3100133	.00073	.00073	2275.00	31001333
37	Not Listed	Johnny Rose & Sons Logging									
38	2081	Jones Aggregate Delivery Hauling		✓	10	1750.00	1700035	.00092	.00092	1750.00	19000435
39		Jones Truck Lines		✓	422	73850.00	6921465	.01071	.00892	43350.00	6921465
40	Not Applied	K P L Trucking & Supply									
					1425	$ 177762.93	139246465	.01162		165037.45	11616496

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Arkansas State Highway and Transportation Department
Research for the Collection of Heavy AR Based IRUE Taxpayers
Revised ATA Survey Information

IRP Account No.	Taxpayer / Owner	Tax Method $.05	Tax Method $175.00	Number of Heavy Trucks	Tax Cost	IRP Apportioned AR Mileage	IRP Cost Per Mile	10	11	Survey Cost Per Mile	Tax Cost on Survey	Mileage on Survey
WP	Bonnell Wayne Mobile			7	1225.00	31894.46	.0038			.0038	1225.00	31894.46
	L E Cogdell Timber			2	350.00	8555.29	.0041			.0041	350.00	8555.29
	Load-O-Rama of AR			13	2275.00	26877.11	.0846			.0846	2275.00	26877.11
	Lucky Bowl Poultry Farms			1	175.00	6560.00	.0267			.0267	175.00	6560.00
	Mobley Trucking Co.			13	2275.00	19563.52	.1163			.0961	1685.00	17537.00
	Lawrence Tomato											
	Insurance Co of AR			4	1050.00	29414.59	.0356			.0086	1050.00	29414.59
WP	Lockhart Vance			1	175.00	6400.00	.0273			.0152	175.00	11512.00
	Ace Stevedoring Co											
	Louis Lipsey											
Not Located	Langley Inc											
Not Located	Dot Cline Trucking											
Not Located	Dave Star Co Inc											
WP	W & S Lumber Co Inc											
	Hudson Cedar Co.			3	525.00	4598.17	.1141			.0115	525.00	45817.00
	Mason Petroleum Inc.			4	700.00	5354.11	.1307			.0013	700.00	53541.00
	M.A. South Co			3	525.00	15442.16	.0340			.0004	525.00	154421.15
	M.C. Pearl											
	M.C. Vaughn											
WP	Miller Hardware Co.											
	Moore Distributing											
	Mobley			5	700.00	13217.00	.0529			.0054	700.00	13217.00
	National Bank			4	525.00	24183.00	.0217			.0021	525.00	24183.00
	National Ark Paper Co			10	1050.00	35933.39	.0292			.0029	1050.00	36203.13
	Northcott Transport Co			10	1750.00	24284.41	.0720			.0072	1750.00	24284.41
WP	D.W. Smith Lumber			3	525.00	20978.78	.0250			.0025	525.00	20978.78
	P.A.M. Transport Inc.											
WP	Ralph Equipment Co.			31	5425.00	44170.00	.1228			.0123	5425.00	44170.00
No	Russell Clark Drilling											
	Ralph Sanders Oil Co Inc											
	Wallace Grain											
	Rice Exports											
WP	Portland Farm			1	175.00	16179.00	.0108			.0125	175.00	14000.00
Not Located	Rob Taylor Stave Co			11	1925.00	39444.00	.0488			.0223	1925.00	86345.00
	Ed Young Logging											
	Roman Pine Inc.			2	350.00	7777.00	.0450			.0050	350.00	70000.00
	Ray Neely			2	350.00	4500.00	.0778			.0078	350.00	45000.00
	Eastbrook Farms											
	Randall Corp			1	175.00	19724.00	.0089			.0086	175.00	20000.00
	Hollis Trucking			2	350.00	40743.00	.0086			.0086	350.00	40743.00
				24	4550.00	134616.55	.0338			.0223	4550.00	134616.55
				177	34475.00	616.5202					34475.00	1127.6400

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Illinois State Highway Transportation Operations and Research for the Illinois Toll Highway Authority and the Illinois Tollway Revised ATA Survey Information 4 of 5

IRP Account No	Taxpayer Name	Tax 4.05	Method 175.00	Number of Heavy Trucks	Tax Cost	IRP reported NR Mileage	IRP Cost Per Mile	10	11	Survey Cost per Mile	Tax Cost or Survey	Mileage or Survey	14
WP	Robert R Kellogg												
	Roberts Bros Trucking Co.												
	Roberts Oil Co Inc.												
	Rogers Lumber Co												
	Russell Hauling												
	Russellville Steel Co.												
	Sanders Trucking												
	Schaefer Hauling												
	Schlumberger Technology												
WP	Schneider National Carriers												
	Schroeder Trucking Inc												
	Schulz Transport Inc												
	Scrogin Transportation Co												
	Service Transport Inc												
	Shell Chemical												
	Shell Oil												
WP	Shell Pipeline												
WP	Shell Trading												
WP	Shell Western E&P												
	Shippers Choice												
WP	Shippers Supply												
	Shippers Transport												
	Shippers Trucking												
	Shippers Trucking Co												
	Shippers Trucking Inc												
	Shippers Trucking Inc												
	Shippers Trucking Inc

Revised AIA Survey Information

3 of 5

IRP Aircraft No	Taxpayer	Owner	Tax Method		Number of Heavy Trucks	IRP Tax Cost	IRP Apportioned AR Mileage	IRP Cost Per Mile			Survey Cost Per Mile	Tax Cost on Survey	Mileage on Survey
			$ 05	$ 175.00									

PLAINTIFFS' EXHIBIT 40

check can compare this report!

Byrd-6

-- FINAL REPORT --
ARKANSAS FOREIGN-BASED HUE TAXPAYERS
HIGHWAY USE OPERATING CHARACTERISTICS
BASE PERIOD: 1982

Per Cents. 58.4576 : 1181 = .0445

TAX PAYMENT METHOD

	5¢ / mile		$175 / truck		Totals
Number of Carriers	920	+	261		1,181
Number of Trucks	72,215	+	14,189		86,404
Truck Miles in Arkansas	97,929,898	+	108,461,265	=	206,391,163
AR Truck Miles/Truck	1,356		7,644		2,389
HUE Tax Expense	$4,896,494.90	+	$2,483,075.00	=	$7,379,569.90
Hue Tax Expense/Mile	$0.0500		$0.0229		$0.0358

CARRIERS	57748	A	4,986
	$6,710,305.30		$6,056,575.00
TRUCKS	115,208		34,608

PX-40

$175 method

261 + 14189 + 9654 = 24043

97929898 / 1356 / $4,896,494.90

108,461,265 + 66,680,900 = 174,142,165 = 9972

$2,483,075.00 / 33,608 = $73.89

A/B = x/C A·C = B·x A·C/B = x

94,058 # Trucks

272,172,143 Miles

2892 AR Miles/Truck

$6,719,019.90 HUE Exp

.0320 $/Mile

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DEFENDANTS' EXHIBIT 2

COUNSELTRANS INC.

COSTS AND SAVINGS ASSOCIATED WITH CHANGES IN WEIGHT LIMITS ON ARKANSAS HIGHWAYS

STATEMENT BY RALPH D. JOHNSON
PRESIDENT, COUNSELTRANS INC.

October 14, 1982

CounselTrans Inc.
6110 Executive Boulevard, Suite 120
Rockville, Maryland 20852

• • • •

[827] INTRODUCTION

The objectives of this study are to determine the impacts on the highway improvement program in Arkansas and on interstate and intrastate transportation costs that would result from increased truck weight limits in Arkansas. Arkansas now allows gross load limits of 73,280 pounds and axle loads of 18,000 pounds for single axles and 32,000 pounds for tandem axles. Impacts are evaluated for an increase of those limits to 80,000 pounds gross vehicle weight, 20,000 pound single axle load and 34,000 pound tandem axle load.

An increase in vehicle load limits in Arkansas can be expected to decrease truck trips currently travelling in or through Arkansas as more payload will be carried per truck. Trip savings will also mean savings in vehicle miles of travel and operating costs for the trucking industry. On the other hand, there will be some additional truck traffic attracted to Arkansas as a result of the ability to shorten distances for interstate freight movements now bypassing Arkansas in trucks loaded to the 80,000 pound GVW level accepted in all but 3 states. As this study shows, the combination of trip reductions on current trips originating in, destined to or entirely travelling in Arkansas and new trip attractions does produce a net increase of trips on most interstate highways. There are net reductions on other facilities, however.

There also will be some impacts of the heavier loadings on Arkansas' highways. Where the increase in vehicle limits results in heavier and or more frequent axle load applications than originally anticipated, pavement lives will be shortened to some degree. Some bridges that are currently adequate to handle existing loadings may be reclassified as deficient with heavier weight limits.

This study makes a factual analysis of both the savings in transportation costs and the additional costs on

the various highway systems that may be expected to result from the changes in the weight limits. The impacts are determined as a result of updated outputs from an interstate commodity flow transport model developed by CounselTrans and previously utilized in three studies of national scope, two performed for and accepted by the Federal Highway Administration.[1] It has also been employed in a regional study. The model identifies truck movements on intercity arterial highway links throughout the [828] country. It identifies these flows in the trucks in which they occur by truck type and load characteristics including gross vehicle loads, net commodity loads carried, and axle loadings imposed on the highways.

Impacts to the highway system are evaluated using generally the same basic highway design methodology employed by the Arkansas State Highway and Transportation Department (SHTD) and related pavement performance formulas. Detailed pavement design information was obtained from the SHTD for a random sample of 20 percent of the state's Interstate System mileage and typical designs on primary and secondary highways. Detailed information was also obtained on the latest bridge inventory as well as relevant traffic information. Principals of the SHTD were extremely cooperative in providing access to all of these data from the agency's files.

It should be noted that bridge impacts are based on the assumption that legislation permitting the new gross and axle weights will incorporate controls relevant to what is known as bridge formula B.

---

[1] 1. State Laws and Regulations on Truck Size and Weight, Transportation Research Board, NCHRP Report 198; 2. Investigation of High-Volume Heavy Truck Intercity Freight Corridors, FHWA; 3. Estimates of Potential Fuel Savings in Barrier States, FHWA.

[829] SUMMARY FINDINGS

1. Transportation cost savings resulting from changes in GVW limits from 73,280 pounds and axle load limits from 18,000 to 20,000 pounds for single axles and 32,000 pounds to 34,000 pounds for tandem axles will total $115.8 million in the representative change year.[1] These savings accrue as follows:
   (1) For vehicles originating in Arkansas: $53.1 million
   (2) For vehicles originating outside Arkansas: $62.7 million
2. Commensurate increases in highway pavement costs of any and all kinds are as follows:
   (1) Federal Aid Interstate Highways: 7.15%
   (2) Other State Primary Highways: 7.44%
   (3) State and County Secondary Highways: 4.00%
3. Increases in structures (bridge) costs are conservatively estimated to be as follows, provided the legislative changes also make provision for incorporation of bridge formula B:
   (1) All State Highway Bridges: 1.82%
   (2) All County Highway Bridges: 2.17%
4. Total highway program cost increases are estimated to be as follows:
   (1) State Program Costs: 4.0%
   (2) County Program Costs: 1.2%
   (3) Municipal Program Costs: 0%

[1] For comparison purposes, to avoid the uncertainties of projection, all savings and costs were estimated as if they occurred in 1982.

5. For comparison with transportation cost savings, actual monetary costs on highways in the change year is dependent on the level of highway program undertaken:
   (1) At an ideal level, if the R. J. Hansen improvement and maintenance program were undertaken as recommended in 1978, which would result in an expenditure of $920.4 million in 1982 for all units of government in Arkansas, the commensurate costs associated with the increases in legal limits would be $26.1 million.[2] Added to the annual program cost this gives a figure of $946.5 million.

[830]

   (2) At the current program level, with 1982 expenditures estimated to be in the neighborhood of $320 million, the additional program costs associated with increases in legal limits would be $8.4 million. Added to the program costs, this gives a figure of approximately $328 million.

Neither one of these increase figures provides an adequate basis for comparison with the $115.8 million savings in item 1 above. There is little doubt that the RJH figure, involving maximum program cost increases, is too high from the standpoint of what the state may realistically achieve in program increases. And it would be manifestly unfair to evaluate annual cost increases on the basis of cost levels which will not be achieved. On the other hand, the present program level is substantially below that needed even to hold the line against a continuing increase in highway surface deficiencies. The Arkansas legislature should give serious attention to significantly increasing available highway funds, distributing the costs among users in line with the R. J. Hansen highway cost allocation study.

[2] Expenditures on all systems in the state excluding Federal Aid.

Nevertheless, whatever is undertaken, it is obvious that transportation cost savings, ultimately reflected in everyone's pocketbook, justifies the cost of the weight increases many times over. This is true if only the direct savings to industries based in Arkansas are taken into consideration by themselves.

• • • •

[834] *Summary of Impacts of New Weight Limits on the Trucking Industry*

Increasing weight limits in Arkansas would result in savings in the first year of:

- 638,131 trips;
- 112.2 million vehicle miles of travel; and
- $115.8 million in transportation operating costs.

DEFENDANTS' EXHIBIT 11

AR	TX	OK	TOTAL
70,000	35,000	35,000	140,000 miles
.50000%	.25000%	.25000%	100%
$522.00	$200.90	$182.75	$904.75 total fee
70,000	100,000	50,000	220,000 miles
.31818%	.45455%	.22727%	100%
$332.18	$363.64	$166.13	$861.95 total fee
70,000	10,000	15,000	95,000 miles
.73654%	.10526%	.15789%	100%
$769.26	$84.21	$115.42	$968.89 fees

DEFENDANTS' EXHIBIT 14

COMPARISON OF ARKANSAS-BASED AND FOREIGN-BASED TRUCK LICENSE FEES

Arkansas Based Truck License Fees	Foreign Based Truck License Fees
$0.0260 License Fee/Mile	$0.0110 License Fee/Mile

SUPREME COURT OF THE UNITED STATES

No. 88-325

AMERICAN TRUCKING ASSOCIATIONS, INC., *et al.*,
PETITIONERS

v.

MAURICE SMITH, DIRECTOR, ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT, *et al.*

ORDER ALLOWING CERTIORARI

Filed November 14, 1988

The petition herein for a writ of certiorari to the Supreme Court of Arkansas is granted. This case is consolidated with No. 88-192, *McKesson Corporation* v. *Division of Alcoholic Beverages and Tobacco, Department of Business Regulation of Florida, et al.*, and a total of one hour is alloted for oral argument.

November 14, 1988